LAW,

Or a Diſcourſe thereof,

IN

FOUR BOOKS.

Written in French by Sir

HEN: FINCH Knight,

His Majeſties Serjeant at

LAW.

And done into Engliſh by the ſame Author.

Leges nobis charæ eſſe debent, Non propter literas, ſed propter earum rerum, quibus deſcriptum eſt, utilitatem, & eorum, qui ſcripſerunt, ſapientiam. Cic.

LONDON,

Printed (by permiſſion of the Company of Stationers) for *C. Adams*, *J. Starkey*, & *T. Baſſet*, and are to bee ſold at their ſhops, at the Talbot, at the Miter, and in St *Dunſtans* Church-yard, in *Fleetſtreet*. *MDC LXI.*

1x
F492l



Rec. Nov. 14, 1899.

Iohes Turvin de Interiori
Templo me jure tenet.

THE EPISTLE To the READER.

THis Book, being formerly publiſhed in the proper and genuine Language, had, as it well deſerved, good acceptation; the Author, and the Work mutually adding to each others Eſteem. And herein the Matter was no leſſe profitable, than the Manner uſefull and ingenious: So that this only, of all the Books of Law (as concerning the Method) is without Preſi-

dent. Herein you may finde a triple relation distinguished by the various Print. In the first, you have the Maxims and positive grounds of the Law, with whatsoever is added or explained by Statutes concerning the same; Which taken apart, will afford a continued sensible discourse. In the second is contained the proofs and examples of those Maxims. And because that precious Flower of the Crown, the Kings Prerogative, may not bee valued in the hands of a common person, such Cases as concern the King are severed from the rest.

To impart good is to improve it, which was one cause of the translation of this Book: yet is it not thereby made so facile as to descend to vulgar capacities; witnesse the very

phrase,

phraſe, the terms of Art, excluding all hope of acerue to Lay-conceited opinions. Neither ſpeaketh it at adventure, but as the Authour taught, and no otherwiſe; whoſe fame will affirm, and none will deny, but that hee beſt knew how to fit and adorn his own Work.

Now remaineth only to extenuate the faults, either thoſe material in the Copy, or literal in the Print, the firſt a judicious Reader is able to ſupply, a little labour will correct the reſt: He that is courteous will remit both. To plot and to perfect at once, is to bee more than man. Such was the pain to compoſe, that the Childe waſted its own Parent therein, nevertheleſſe being unhappy preventing the bleſſing of Perfection, and becomming an Abortive; But be

you the Guardian, ſo much I t
invites, the Authour merits
more. His propoſed end was to
enrich others by this expreſſion
of his love, cover therefore the
faults occaſioned by an Error of
Love, and redeem Him, that for
your ſake is imbarqued in the
common Cenſure of all Men.

J. L.

The First Book of Law.

CHAP. I.

Of the Law of Nature.

LAw is an Art of well ordering a Civil society. In Greek it is called νόμος ἀπὸ τῆς νέμειν, *a distribuendo*, because it gives and distributes right to every one. In Latine it hath its name *Lex*, not *a ligando*, as some would have it, although Law indeed be *vinculum civitat.* nor *a legendo*, which is, to read; though I find that to please *Bracton* most: but as he that best could tell, derives it, *a legendo*, which is to chuse, because of the choice and exquisite wisdom that is in it. *Nam ut illi* (saith *Tully*, speaking of the Grecians) *æquitatis, sic nos delectus vim in Lege ponimus, & proprium utrumq; legis est.* The Hebrews call it תורה (*thorah*) from the root ירה, *jarah*

Bract. l. 1. c. 3.
Cic. l. 1. de Leg.

which is to teach: because it is the doctrine of truth, as *Plato* saith in his ninth book περὶ τῶν νόμων, *Leges ad hominum doctrinam ponuntur.* So that Law carrieth with it, & hath as it were inclosed in the name and nature of it, those three lawes συγκλοπὰς ἐπιστήμης, and golden chain of all good learning, *Lex veritatis, Lex justitiæ, Lex sapientiæ.* And therefore is not only ἐπιστήμη *scientia*, but ἐπιστημονικωτάτη *scientificissima.* Whereupon *Plato* telleth us, *Nomen mentis consentaneum* (that is, to God, whom the Philosophers call νοῦς, or *mens*, which is truth, wisdom and justice it self) *possidet divina nobis & admirabilis lex.* So that the name it self doth shew the Author from whence it came: and as he saith, *Qui tantum volem genuere parentes.*

Plato l. 4. de Repub. τὸ νόμιμον καὶ σωφρονικὸν κεκτῆσθαι ἀνὸ θείας ἡμῶν τῆς θαυμαστῆς νομοθεσίας.

Lawes are native or positive.

Tully in his Oration *pro Milone* takes us out this Lesson; *Est enim hæc non scripta sed nata lex, quam non didicimus, accepimus, legimus, verum è naturâ ipsa arripuimus, hausimus, expressimus; ad quam non docti, sed nati, non instituti, sed imbuti sumus.* In his first book *de Legibus*, he doth again repeat it. *Constituendi vero juris ab illa summa lege capiamus exordium, quæ seculis omnibus ante nata est quam scripta lex ulla:* where this native Law he calleth *summam legem*, as that from which all other lawes do stream.

Native, are those Lawes which are in us of themselves, and therefore unchangeable and perpetual.

These

These are twofold, like those two great lights which God hath set in the firmament of our heart, Nature and Reason: For being proper to a man, as he is a man and reasonable creature, they may be divided as reason it self is divided. They that have traveled most in the grounds of Nature, distinguish that excellent faculty of Reason (which of all earthly creatures man only hath) into two other faculties, νῦς or the mind, and διάνοια or the reasoning part: νῦς they call that faculty of the soul that offereth unto us things clear and lightsom of themselves, without any further reasoning or discourse. By διάνοια they mean that faculty of the soul, that by discourse of reason doth deduce and draw one thing from another. From hence the masters and professors of the art of reason, make judgment (which is the flower of all reason, and in effect nothing else but *ratio conjuncta*, reason set together) to be *noeticum* or *dianoeticum*. We by their example may distinguish those which we call native Lawes, and are the foundation of all other lawes, into primitive, which is that they call *Noeticum*, we, the law of Nature, or secondary rules of reason which is their *Dianoeticum*, with us the Law of reason. And these very names of νῦς and διάνοια or λόγισμος, which is all one, reason and the discourse of reason, both *Plato* and *Tully* speaking of the laws do give them.

The law of Nature is that sove-

Lex naturæ est ratio summa insita in hominis natura. quæ jubet ea quæ facienda sunt, prohibetq; contraria.

raign reason fixed in mans nature, which ministreth common principles of good and evil. In effect nothing else but those κοιναὶ ἐννοιαι, or *Communes noticiæ*, which the Philosophers speak of; That men must live peaceably together: That we are not to do unto another that which we would not have done unto us: That Justice is to be done to all men, and such like. Of this *Tully* speaketh 2 *de leg.* *Principem illam legem & ultimam mentem esse dicebant.* Where he likewise calleth it the high and supream law of all. And in another place, *Natura juris ab hominis repetenda natura*, because the light hereof as the light of the Sun shineth most clearly, and in the eyes of all men.

Cic. lib. 2. de Leg.

CHAP. II.

Of the Law of Reason.

THE law of Reason is that which deduceth principles by the discourse of sound reason. Whereof *Tul.* saith, *Ratio cum est in mente hominis confirmata & confecta, lex est*: And again, *Lex est radius divini luminis*, and *recta ratio summi Jovis*. *Plato*, by way of Poetical fiction doth imagine that there were at the first, two contrary humors that raigned in man, and (as it were) two fools of his counsel that did rule him, Pleasure and Pain.

Cic. l. 2. de Leg.

Plat. l. 1. de Leg.

Pain. Each had two other affections to attend them, Hope of good things to come, and Fear of future evils, whereby mens minds were haled and pulled hither and thither, and diversly distracted. Then to govern both, God set in man λογισμὸν, the reasoning or discoursing part, to teach what is good or bad in either; which he calleth τὸ λογισμὸς ἀγωγὸν χρυσὸν καὶ ἱερὸν, the golden and sacred rule of reason. We may term it, that uncorrupt reason which *Adam* had at the first in full perfection: But through *Adams* fall (that brought sin into the world, and the fruit of sin, blindness and corruption) that excellent image of reason is now so wonderfully defaced even in the best and wisest, that the light of this, as the light of the Moon, shineth more obscurely: but yet shineth, so that from it all the other laws receive their light.

And hereupon are grounded more or less clearly, divers rules of reason, that every where go for undoubted Oracles, which (confirmed by judgment, learning, and much experience, and rightly and well applied) are so many stars and shining lights, to direct our course in the arguing of any case: yea such is their singular and incomparable use, that, as Lords Paramount, they rule and over-rule the grounds themselves. And rather than any of these (rightly understood) should fail, the very maximes and principles of the positive law

will yield, as to a higher and more perfect Law.

CHAP. III.

Of Rules taken from other learnings.

The rules of reason are of two sorts, some taken from forreign learnings, both divine & humane: the rest proper to Law it self.

Of the first sort are the principles & sound conclusions from forreign learnings; Out of the best and very bowels of Divinity, Grammar, Logick; also from Philosophy natural, Political, Oeconomicks, Moral, though in our reports and yea-books they come not under the same terms, yet the things which there you find are the same; for the sparks of all Sciences in the world are raked up in the ashes of the Law: and well doth one say, *Non ex Prætoris edictis, neq; a duodecim tabulis, sed penitus ex intima philosophia hauriendæ juris disciplina est.* He that will take the whole body of the Law before him, and go really and judicially to work, must not lay the foundation of his building in Estates, Tenures, the gift of Writs, and such like, but at those currant and sound principles which our books are full of.

Cic. l. 1. de Leg.

First

First from Divinity, the doctrine of Religion, the head and master-piece of all the rest, whereof S. *Aug.* saith truly, *Omnium legum est inanis censura, nisi divinæ legis imaginem gerat.* From hence we have these two rules. *Augustin. de Civitat. Dei.*

To such laws of the Church as have warrant in holy Scripture, our Law giveth credence. 34 H. 6. 40. *Prisot. Ariels leys que eux de St. Eglise ont en auncient escripture, ceux-ient pur nous a donot credence: car ceo est common ley, sur q; touts manner leys sont fondues,* 4 El. 265.

1. **The Sabbath day is no day in law cases,** upon a fine levyed with Proclamations according to the Statute. 4 H. 7. Cap. 24. If any of the Proclamations be made on the Lords day, all the Proclamations are erroneous, for the Justices may not sit upon that day, but it is a day exempt from such business by the Common-law for the solemnity of it, to the intent that all people may apply themselves that day to prayer and serving of God.

No Plea shall be holden *Quindena paschæ*, because it is alwaies the Sabbath, but it shall be *crastino quindenæ paschæ.* *F N. B* 17. *f.*

If a Writ of *Scire facias* out of the Common-place bear *Teste* upon a Sunday, it is error, because that is not *dies juridicus in Banco.* 1 *El. Dy.* 168.

No sale upon a Sunday shall be said a sale in market overt to alter the property. 12 E. 4. 8.

Of Grammar, the rules are infinite in the Etymology of words, and in the construction of them, what their nature is

single, what joyned with other: among the rest which need not be remembred, this one we have common in our Books.

2. Words in construction must be referred to the next antecedent, where the matter it self doth not hinder it.

32 H. 8. Dy. 46. b. An Indictment of murder, found in this sort, That *Eliz. fuit in pace*, &c. *quosq; A. vir præfat. Eliz. de D. in Com. S. Yeoman*, did kill her, is good; for the addition Yeoman, must of necessity refer to the husband, because a woman cannot be a Yeoman; but an Indictment *quousq; Alicia S. de D. in Com S. uxor I. S. Spinster*, &c. is not good against *Alice S.* for there Spinster being an indifferent addition, both for man and woman, must refer to *I. S.* which is the next antecedent, and so the woman hath no addition. So of an Indictment against 9 E. 4. 48. *I. S. serviens I. D. de D. in Com Midd. Butcher*: This is not good, for, servant is no addition, and Butcher referreth to the Master, which is the next antecedent.

From Logick; In the Axiom of causes & effects.

3. The cause ceasing, the effect doth likewise cease.

5 E 4. 8. b. The King granteth an Office to one at will

will, and ten pound fee during life *pro officio ſuo*, now if the King put him from his office the fee ſhall ceale.

The Executor, nor husband (after the death of his wife Gardein in ſoccage) ſhall retain the Wardſhip, for the Gardein hath it not to his own uſe, but to the benefit of the Heir: and the Executor, or husband have not the affection which the Teſtator or his wife had, which was the cauſe that the Law gave them the Wardſhip. 7 *El.* 293. *b.*

If a ſtroke be given the firſt day of *May*, and the King pardon him the ſecond day of *May*, all felonies and miſdemeanors, the party ſmitten dieth the third day of *May*, ſo as this is no felony till after the pardon, yet the felony is pardoned, for the miſdemeanor is pardoned, and therefore all things purſuing are alſo pardoned. 13 *El.* 401.

The King hath a Ward, *pur cauſe de gard*, and after maketh livery to the firſt Ward, now the ſecond Ward ſhall not ſue livery. 13 *E.* 4. 10. *b.*

If two Coparceners make a Leaſe reſerving a rent, they ſhall have this rent in common, as they have the reverſion: But if afterwards they grant the reverſion, excepting the rent, then they ſhall be Joyntenants of the rent.

It is no principall challenge to a Juror that he hath married the parties mother, if ſhe be dead without iſſue, for the cauſe of favour is removed. 14 *H.* 7. 2.

4. Things

4. Things are construed according to that which was the cause thereof.

44 E. 3. 14. b. A man makes me swear to bring him money to such a place, or else he will kill me, I bring it him accordingly: This is felony in him. So if he make me swear 14 Ass. pl. 20. to surrender my estate unto him, and I do so afterwards, this is a disseisin to me.

21 E. 4. 68. b. One imprisoned till he be content to make an obligation at another place, and afterwards he doth so, being at large, yet he shall avoid it by dures of imprisonment.

3. E. 3. 84. Outlary in trespass is no forfeiture of land, as outlary of felony is, for though the not appearing be the cause of outlary in both, yet the force of the outlary shall be esteemed according to the hainousnes of the offence, which is the principal cause and foundation of the process.

A man and feme sole have a villain, and afterwards entermarry, and the villain purchaseth land, they shall not have the land by entierties, but by moyties joyntly, or in common, as they had the Villain.

5. According to that which was the beginning of it.

33 Ass. pl. 7. If a Servant (departed out of his Masters service) kill his Master upon a malice that he bare him whilst he was his servant, it is petty treason.

A. erects

A. erects a ſhop upon the Kings Free-hold, the King grants the land to *B.* in fee; *A.* before entry or ſeiſor of the ſhop by the Kings Patentee, continueth his poſſeſſion and dieth ſeiſed. This is no diſcent to toll the Patentees entry: for by his firſt erecting of the ſhop, he could gain nothing againſt the King. 10 *Eliz. Dy.* 266. *b.*

6. And therefore a derived power cannot be greater than that from which it is derived.

The Attorney of one that is deceaſed, cannot make claim off from the land, if the diſſeſſee himſelf durſt have gone to the land. *Litlet.*

The Bailiffe of a diſſeiſor ſhall not ſay, That the Plantiffe never had any thing in the land, for the Maſter himſelf ſhall not have that plea, becauſe he is not tenant of the Freehold. 28 *Aſſ. pl.* 4.

The ſervant ſhall be eſtopped to ſay, the Free-hold is his Maſters, by recovery againſt his Maſter, though the ſervant himſelf be a ſtranger to it, for he ſhall not be in better condition than he in whoſe right he claimeth. 2 *E.* 4. 16.

7. Things are diſſolved as they be contracted.

An Obligation, or other matter in writing cannot be diſcharged by any agreement by word. 19. *E.* 4. 1. *b.*

In

5 H. 7. 33. In an annuity growing by prescription *riens arere* is a good plea, for this prescription is a matter in fait: but in an annuity by deed it is no good plea, without shewing an acquittance.

4 H. 7. 7. b. When a man avoides the Kings title, by as high a matter of record as the King claimeth, he may have it by way of plea, without being driven to his petition, though the King be entituled by double matter of record; as one is attainted of treason by Parliament, and an office finds his lands, whereby the King seiseth them, The Party may alledge restitution by Parliament, and repeal of the former Act.

8. Things grounded upon an ill and void beginning cannot have a good perfection.

10. El. 344. An Infant, or a feme covert make their will, and publish it, and after dying of full age, or sole, yet the Will is nothing worth.

One disseised of two acres in D. releaseth all his right in all his lands in D. and delivereth it to a stranger, to be delivered over to the disseisor as his deed, such a day: before which day, the disseisor disseiseth him of another acre in D. and then the release is delivered over to him, yet nothing of the right of this third acre passeth by the release.

9. The

9. He that claimeth paramount, a thing ſhall never take benefit nor hurt by it.

Two Joyntenants, one makes a leaſe for years of his moity, reſerving a rent, and dieth. The ſurviving Joyntenant ſhall have the reverſion of his moity, but not the rent, for he cometh in by the firſt feoffor, and not under his companion. So of the wife, where the husband being leſſee for years in her right, maketh a leaſe of part of the term, reſerving a rent. 2 & 3 El. Dy. 187.

An Executor recovereth and dieth intestate, adminiſtration of the goods of the firſt teſtator is committed to *I.S.* *I.S.* ſhall not ſue execution upon this recovery.

Dower cannot be aſſigned, reſerving a rent, or with a remainder, over, for ſhe is in from the husband, and not from him that aſſigne th dower.

10. According to the end.

Vouchee cometh into the Court to be viewed, and being viewed, is awarded of full age; yet he ſhall not be driven to anſwer, till he come in to the ſame intent by other Proceſs. 31 E. 1. *Joynder on ayd*, 10.

The vouchee, upon a *Grand cape ad valentiam*, ſhall not loſe the land, though he cannot ſave his default, for the proceſs is only to this end, to have him to appear. 19 E. 4. 3.

A man that is warned by Writ to anſwer 50 *aſſ. pl.* 2.

swer to a matter shall not be driven to answer any other matter than is contained in that Writ, though the King be party. As if it by office it be found, that lands in chief discended to J. S. a fool natural, and that A. occupieth them, whereby a *Scire facias* goeth out against A. to answer why the lands should not be seised into the Kings hands for the Ideocy of *I. S.* A. cometh in and pleads, That *I. S.* when he was of perfect memory, made a release to one B. who infeoffed A. This is good enough without shewing any licence of alienation to discharge himself for the purchasing of those lands.

In the matter of Subiects and attornes.

11. Where the foundation faileth, all goeth to the ground.

3 E. 374. b. A Church appropriated to a spiritual corporation, becometh disappropriate, if the corporation be dissolved.

49 E. 3. 8. A disseisor of lands in ancient demesne the Lord confirms unto him to hold at the Common Law, the disseisee re-entreth, now the land shall be ancient demesne again: for the estate (whereupon the confirmation should inure) is defeated.

Lit. When an estate (to which a warranty is knit) is undone, the warranty also is undone. As if Tenant in taile discontinue, and the discontinuee is disseised (or make a feoffe-

feoffement upon condition) in whose poſſeſſion a collateral anceſtor of the iſſue in taile releaſeth and dieth, the iſſue is barred. But if the diſcontinuee enter upon the diſſeiſor (or upon the feoffee for the condition broken) the iſſue is reſtored to his formedon.

12. Things incident cannot be ſeverd.

Eſtouers, or wood granted to be burnt in ſuch a houſe, ſhall go to him that hath the houſe, by whatſoever title: for one is inſeparably incident to the other. 12 *El.* 381.

Lord & Tenant by fealty and homage, the Lord releaſeth his fealty; this is void: for fealty is incident to homage. 7 *E.* 4.11.

An office of skill and diligence, or annuity, *pro conſilio impendendo*, cannot be forfeited by attainder of Treaſon. 12 *El.* 379.

A Court baron is incident to a mannor, and Court of Pipowders to a Fair: therefore one cannot grant the mannor or fair, reſerving thoſe Courts. Where one holdeth of a man to keep his Caſtle, the Lord cannot grant his Caſtle gard, reſerving the Caſtle. 19 *H.* 8. *Br. incidents* 34. 31 *E.* 3. *aſſ.* 441.

13. Things by reaſon of another, are of the ſame plite.

The cuſtom of Gavelkind is not changed, though a fine or recovery be had of the ſame at the Common Law: for this is a cuſtom

a cuſtom by reaſon of the land, and therefore runneth alwaies with the land.

6 E.6. Dy. 72. b. But otherwiſe it is of lands in ancient demeſne, partible among the males: for there the cuſtom runneth not with the land ſimply, but by reaſon of the ancient demeſne: and therefore becauſe the nature of the land is changed by the fine or recovery from ancient demeſne to land at the Common Law, the cuſtom of parting it among the males is alſo gone.

F.N.B. 21. b. An erroneous recovery had of lands in Boroughengliſh, the puiſne ſon ſhall have a Writ of Error, becauſe the land it ſelf goeth to him. So ſhall all the ſons of lands

42 E.3.3. in Gavelkind.

Two Coparceners make partition, and one covenants with the other to acquit the land: now if the Covenantee alien his part, the Alienee ſhall have a Writ of Covenant.

Perſonal things.

14. Cannot be done by another.

7 H.4. 19. Suits of Court cannot be done by another.

22 E.4.34. A man cannot excuſe himſelf of a contempt (as of not ſerving the Kings Proceſs) by Attorney, but in proper perſon.

15. Cannot be granted over, as matters of pleaſure, eaſe, truſt, and authority.

A license to hunt in my Park, to go to Church over my ground, to come into my house, to eat and drink with me, cannot be granted over. So of a way granted for life over my ground. 12. H. 7. 25. 7. H. 4. 36.

The Patentee for life of an office of trust, as to be a Chamberlain of the Exchequer: Squire of the body cannot assign it, unless it be specially limited in his Patent that he may. For then he might grant it to one in whom the King hath no trust, or that would be negligent, &c. 11. E. 4. 1.

The keepership of a Park, Stewardship, Baylywick of Husbandry, &c. for life, cannot be granted over, because they are offices that require skill and diligence. 12. El. 179.

A. licenceth B. to do an act: B. cannot grant this licence to another. Br. licences 25.

A Warrant of Attorney made to one to deliver seisin, he cannot grant this his authority over. 19. H. 8. 10.

16. Die with the person.

When a corporal hurt or dammage is done to a man, as to beat him, &c. if he or the party beaten die, the action is gon. 12. H. 8. 12.

Lessor Covenants to pay quit-rents during the term, and dieth, his executors shall not pay them: for it is a personal Covenant, which dieth with the person. 1 & 2 P. & M. 114.

Among the disagreeable arguments

First from those that differ only in

a certain respect and reason, not in deed and in nature.

Things do inure diverſly, according to the diverſity of

17. Time.

26. Aſſ. pl. 66. Lands given in Frank-marriage, reſerving a rent, the reſervation is void till the fourth degree paſt, and afterwards good.

Perſon viz.

18. The ſame perſon.

14. H. 8. 6. One that hath a rent charge going out of the wives lands, releaſeth it to the husband and his heirs: the husband yet ſhall not have it, but it ſhall inure him by way of extinguiſhment only, as ſeiſed in right of his wife.

19. Several perſons.

1 & 2. P. & M. 104. A man makes a leaſe of a Mannor, except an acre, this acre is no part of the Mannor, as to the leſſor, but as to him that hath right to demand the Mannor, by an eigne title, it remaineth parcel, and therefore he ſhall make no forepriſe in his Writ.

11. E. 4. 2. If Tenant in tail and his iſſue diſſeiſe the diſcontinuee of tenant in tail; and tenant in tail die, whereby the lands deſcend to the iſſue: Now he ſhall be remitted, and ſhall be in as tenant in tail againſt every ſtranger.

ſtranger, and derraign the firſt warranty; but not as againſt the diſcontinuee, becauſe he was *Particeps Criminis*.

Then from Relatives.

20. No man can do an act to himſelf.

A man cannot preſent himſelf to a benefice, make himſelf an officer, nor ſue himſelf: and therefore when a man having right to land, hath the freehold caſt upon him by a latter title, he ſhall be ſaid in of his ancient title, becauſe there is no body againſt whom he may ſue, but himſelf, and he cannot ſue himſelf. 13.H.8.22. *Lit.*147.*b*.

No more can a man ſummon himſelf. And therefore if the Sheriffe ſuffer a common recovery, it is error, becauſe he cannot ſummon himſelf. 8.*H.6*.29. 3.*El. Dy.*188.

A man cannot be both Judge and party in a ſuit. 4.*M.B.com.*25.

And therefore if a Juſtice of the common place be made a Juſtice of the Kings Bench: though it be but *hac vice*, it determineth his patent for the Common place. For if he ſhould be Judge of both Benches together, he ſhould controll his own judgments: for if the Common place err, it ſhall be reformed in the Kings Bench.

Of Compariſons,

From the equals.

21. Things are to be construed, *Secundum equalitatem rationis.*

(c) 17 El. Coo. 3. 136. Sr. Will. Herberts case. Upon a recognisance acknowledged by the Ancestor, or a Judgment in an Action of debt given against him: if he die seised of two acres, whereof one holden in Borough English, or having issue two daughters which make partition, or if he die without issue, whereby part of his land discendeth to the heir of his fathers part, and part to the heir on the part of the mother: in all these cases if one only be charged, he shall have contribution against the other: for they are in *æquali jure.*

D. 26. als pl. 37 If two, four, or more men being severally seised of land, joyn in a recognisance, all their lands must equally be extended.

Bract. l. 1. c. 3. And this is a Logical vertue, a kind of equity as *Bracton* calleth it, where he saith, *Equitas est rerum convenientia quæ paribus in causa pariasis jura desiderat, & omnia bona coæqui parat: & dicitur æquitas quasi æqualitas.* Whose nature is to amplifie, enlarge, and add to the Letter of the Law.

Especially this shineth & sheweth forth it self in the exposition of Statutes, by extending things there provided to mischiefs in the like degrees, whereof the examples every where are pregnant, and in guiding the grounds and maxims of things, that newly start up, by the rule of the Common Law.

(a) 23. H. 8. Fit. Uses at the Common Law were (a) nothing, yet in time gaining greater regard

to be imputed among inheritances, are demeaned as other inheritances at the Common Law. So as a *poſſeſſio fratris* ſhall be of them, and of lands in Borough Engliſh, the uſe ſhal deſcend to the puiſne. And now alſo theſe uſes being turned into eſtates, ſhall be demeaned in all reſpects as eſtates in poſſeſſion.

So when (*b*) Cuſtom createth inheritance in Copyhold lands, and maketh the lands diſcendable, then ſhall the Law direct the diſcents according to the maxims and rules of the Common Law, to have a *poſſeſſio fratris*, and ſuch like: but not in collateral things, as Tenancy by curteſie Dower, diſcent to toll an entry, &c. (*b*) *Coo.* 4. 22.

From the greater and the leſſe.

22. The greater doth contain the leſſe.

By a pardon of murder, manſlaughter is pardoned.

An attaint ſuppoſing a verdict to have paſſed before two Juſtices, whereas it paſſed before four, is good enough.

A recovery pleaded of three acres, where it was of ſix, is good enough.

A Condition that I. ſhall not infeoffe I. S. is broken, if I. infeoffe him and I. D.

A Copy-holder of a mannor where the cuſtom giveth liberty to demiſe in fee, may demiſe it for any leſſe eſtate, without other preſcription.

Where the cuſtom is, that a man ſhall

18. E. 38. not deviſe his lands for any higher eſtate than for term of life, yet if a deviſe be in fee, and the deviſee claim but for life, the deviſe is good.

3 & 4 P. & M. Dy. 150. b. By the ſtatute 32 Hen. 8. that giveth power to deviſe two parts of ones lands, a deviſe of the whole had been good for 2 parts, though the Statute 34 & 35. H. 8. of explanations had not been made.

23. A matter of higher nature determineth a matter of lower nature

21. H. 75. A man hath liberties by preſcription, & after taketh a grant of thoſe liberties by Letters Patents from the King, this determineth the preſcription, for a matter in writing determineth a matter in fait.

33. H. 8. Dy. 50. If an offence, which is murder at the Common Law be made high Treaſon, no appeal ſhall lie of it, becauſe the offence of murder is drowned, and it is puniſhable as high treaſon only, whereof no appeal lieth.

24. The more worthy thing draweth to it things of leſſe worthineſs.

11. H. 4. 31. An adulterer takes away another mans wife, and puts her in new cloths, the husband may take the wife with her cloaths.

10. El. 323. b. A Box enſealed with charters, it ſhall go to the Heir with the charters, and not to the Executors.

A

A base Myne where there is Ore, shall be the Kings for the worthinesse of the Ore.

The body of a man is more worthy than land, therefore land shall follow the nature of the person. 3. El. 238.

As a villain shall make free land to be villain land, but villain land shall not make a free man to be a villain.

So the Kings land which he hath in his natural capacity, shall be demeaned according to the priviledge and prerogatives of his body royal

And therefore

25. Things accessary are of the nature of the principal.

A servant procureth another to kill his master: this is no petty Treason, in the servant, because it is but felony in the other which is the principal. 40. Ass. pl. 25.

A Parson grants an annuity with a *Nomine pœnæ*, the successor shall be charged with the *Nomine pœnæ* due in his predecessors life, and not his executors. 7. H. 6. 19. b.

The profits of the office of a Filizer, &c. cannot be put in execution upon a recognizance, Statute, &c. because the office it self, being an office of trust, cannot. 27. H. 8. Dy. 7. b

Tythe is not payable of Oaks usually topped and lopped (though it be every seven or eight years) for the branches are of the nature of the principal (that is to say) the 26. El. Molin.

Oak it ſelf, for which no Tythe is to be paid.

26. A mans own words are void, when the Law ſpeaketh as much.

30. *aſs. pl.* 8. Lands given to two, *& uni eorum diutius viventi*, they make partition, and one dyeth, yet the leſſor ſhall have again the moity of him that dieth, for *uni eorum diutius viventi* are but idle words, becauſe (without them) the Joyntenant, by courſe of Law is to have all, if he do ſurvive.

From the rule of method.

In things of Formality.

27. The generals muſt go before, and the ſpecials follow after.

(c) *The rule of the Regiſter.* In a Writ the (c) general ſhall be put in demand, and in plaint before the ſpecial: as land before pree, paſture, wood, juncary, mariſh, &c. wood before alders, willows, &c.

28. The more worthy is to be ſet before the leſſe worthy.

Ibid. The entire thing ſhall be demanded before the moity part or parts.

Ibid. The thing of greater dignity before that which is of leſſe: as a meaſe before land, a

Caſtle

Caſtle before a meſſuage or mannor, &c.

In a Replevin if it be of two Cattle, one quick and the other dead, the liv thing ſhall be firſt demanded. *Ibid.*

Where one hath a preſentment to a Church two turnes, and another the third turn: he that hath the third turn, bringing a *Quare impedit*, ſhall not begin with his own turn firſt, but with the other two turnes.

Next are the Precepts of Natural Philoſophy.

29. Law reſpecteth the bonds of Nature.

Affection for the proviſion for the heirs males that one ſhall ingender, brotherly love, &c. are good conſiderations to raiſe a uſe; but long acquaintance and familiarity are not.

The ſon may maintain his Father, and one brother another.

Brothers or Coſins ſhall not wage battel in a Writ of Right.

A Statute that maketh it felonie to receive or give meat and drink to one that committeth ſuch and ſuch an offence knowing it, ſtretcheth not to a woman that receiveth or giveth meat and drink to her husband in ſuch a caſe.

30. The Law judgeth and eſteemeth of all according to their nature:

ture: both persons and their a-
ges, things, actions, and the time
of the doing them.

In persons.

It loketh to the excellencie of
some, and giveth them singular
privileges and preheminencies
above the rest. As to the King,
the Queen his wife, Noblemen,
and Peers of the Realm. Also
unto them of the Church.

It tendreth the weakness and debi-
lities of others; As of

Men out of the Realm, or in pri-
son, Fems Covert (and therefore
favoureth them for their dow-
ers) infants, men unlettered, I-
deots out of their right mind, or
without all understanding, as
those that are born dumb, deaf
and blind, or having other im-
perfections.

If a disseisor die seised, the disseisee be-
ing all the while within age, Covert baron
in prison or out of the Realm, it shall be
no discent to toll the entrie of the disseisee.

Upon a lease made to a husband and
wife, she shall not be charged after the
Husbands death, for waste done by him
in his life time.

A woman shall be indowed of the best
pos-

possession of her husband: as if the husband held of I. S. by iij. d. who held over of another by xx. d. and I.S. release to the husband (so as now the husband holds by xx. d.) the wife being endowed of this land, shall hold only by the third part of iij. d. and not of xx. d.

An Infant, Ideot, and a man of *non sane memorie*, may enter, or have an action to avoid their feoffements.

If a dumb person bring an action, he shall plead by *procheine amy*.

1. Strangers not parties nor privies.

Lessee for years grants a rent charge, and surrenders, yet the rent shall be paid during the years. 1. *El.* 198.

So if he in the reversion grant a Rent charge during the term, and then the lessee surrendreth unto him, he shall pay the rent during the term: for a stranger (that is, the grauntee of the rent) for his benefit shall say, that the terme continueth, and that it is determined.

And therefore

Things done in anothers right.

A person out-lawed or excommunicated may have an action as executor of another man.

And a villeine in such case against his Lord: for they recover not their own but to anothers use

32. It disfavoureth other some.

Aliens neither born within the Realm, nor free denisens, that they shall not participate of the privileges of natural born Subjects.

Especially aliens that are enemies.

Alien enemies shall not have so much as a personal Action, which other Aliens may.

An obligation made to an alien enemy shall go unto the King.

Any body may seise the goods of an Alien enemy, to his own use.

Touching their ages.

33 It holdeth.

xxi. their full age to make good all act they do.

xiiij. their age of discretion.

And therefore

That a competent age to bind a man in matter of marriage.

x'j To bind the woman.

ix. to deserve her dower.

In things.

34. It respecteth every one according to worthiness. As

Life and liberty most; the person above his possessions; freehold and inheritance more than it doth chattels; real chattels more then personal.

None shall have judgment to recover in an action of wast, where the wast cometh but to 12.d. or such a petty sum, for *De minimis non curat lex.*

A Lease for life, the remainder for years, the remainder over in fee, an action of wast lieth for him in the remainder, against lessee for life: for the mean estate for years is not regarded. Otherwise it were if the immediate estate of the remainder were an estate for life.

A villeine infranchised for an hour, is for ever. So infranchised upon condition, the condition is voide, and the infranchisement absolutely good.

If a man for fear and simplicitie will confess himself guilty of a Felony, yet the Iudge must not record that confession, but suffer him to plead not guilty; and that is in *favorem vitæ.*

35. A matter in the right more than a matter in possession.

In

3. E. 3. 88. In avowrie or annuitie, aide ſhall
be of a perſon, if the Plaintiff be ſei
by the hands of the ſame perſon, bec
it is of the perſons own wrong to deny
Otherwiſe in a *Cuſſavit*, for that is in
right for the land.

14. H. 7. 5. Keb. In an action of Treſpaſs againſt ten
for life, who pleads villenage in the Pla
tiff, and the Plaintiff is found free
no villeine, yet he in the reverſion is
eſtopped by this Verdict: For the thi
it ſelf whereupon the reverſion depend
is not in demand, and the Plaintiff ſh
recover only dammages: neither can
in the reverſion have a Writ of Error
attaint upon it.

Otherwiſe it is in a *Nativo habendo* f
there the right of villenage cometh
queſtion, and he in the reverſion m
have an error or attaint.

Yet it favoureth.

36. Poſſeſſion where the right is equal.

A man purchaſeth at one time ſeveral
lands holden of ſeveral Lords by Knight
ſervice, and dieth: the Lord that firſt ca
happe the Wardſhip of his heir, ſhall hav
it.

8. El. 296. Husband and wife purchaſe ſocage land
unto them and the heirs of their body, and
having iſſue within fourteen years of age:

Now

now if the Grand-mother of the part of the mother of the iſſue do firſt ſeiſe the body, ſhe ſhall have the Wardſhip, and not the Grand-father of the part of the father of the iſſue.

37. Matters of profit, or intereſt largely: of pleaſure, eaſe, truſt, authority, or limitation ſtrict.

A Licenſe to hunt in my Park, or walk in my Orchard, extends but to himſelf, not to his ſervants, nor other in his company, for it is but a thing of pleaſure, otherwiſe it is of a licence to hunt, kill, and carry away the Deer, for that is a matter of profit. 13. H. 7. 13.

Way granted to Church over my land, extends not to any other but himſelf, for it is but an eaſement. 13. H. 7. 25. b.

A reverſion granted to two jointly, and the Tenant atturnes to one, it is a void attornment.

If the Sheriff behead one that ſhould be hanged, it is felony. 11. H. 7. 12. b.

The King licenceth one to alien the third part of his land, and he alieneth all, it is a void alienation for all. 35. H. 6. 58. b.

A Leaſe is made to A. and B. for their lives, A. dieth, B. ſhall have all during his life, for it is an intereſt. 4. E. 6. 68. b.

But if a Leaſe be made to I. S. during the life of A. and B. there (if one of them dy) the eſtate is utterly determined, for that is a limitation.

38. Therefore these may be countermaunded, so cannot those.

9. E. 4. 4. b.

(a) 1. E 5. 2. (b) 28. H. 8. Dy. 22 (c) Park. d. A License to come to my house to speak with me: (a) Goods bailed over, to deliver to I. S. or (b) to bestow in almes, (c) A letter of Attourney to deliver seisin: all these may be countermanded before they be done.

14. E. 4. 1. But if I present I. S. to a Church, I cannot after vary and present a new, for no kind of interest passeth out of me.

Park. 19. b. So if I deliver an Obligation as a scrowle into a Strangers hand, to be delivered to the Obligee, upon condition performed, for the Obligee is as it were partie or privy to the delivery.

39. Matters of substance more than matters of circumstance.

21. H. 7. 24. b. Pleas in bar, and replications (though the Plaintiff be afterwards non suit) may an estopple, for they are expres alleg-tions and material. As in debt upon an obligation, if the Defendant plead in bar an acquittance made at D. or if the defendant plead an acquittance, and the Plaintiff reply, that it was made by dures of imprisonment at D: now in another action, neither the Defendant shall plead that the acquittance, nor the Plaintiff that the dures were at another place: But a matter in the

or count, makes no eſtopple, for they are but ſuppoſals.

As in a formidone and claim by diſcent from *I. S.* or a mordanceſter, as ſon and heir to *I. S.* yet in another formidone he may claim from *I. D.* and ſhall not be eſtopped.

No more ſhall recitals make any eſtoppel, for they are not material. As where *A.* reciting that he is ſeiſed in fee of the Mannor of D. granteth a rent out of it to *B.* this ſhall not eſtop *A.* to ſay that he had nothing in the Mannor. 33. *H.* 6. 10. *b.*

39. Things executed & done, more than things executory, and to do.

A feme diſſeiſers taketh a husband, the diſſeiſy releaſeth to the husband, afterward a divorce is had for precontract: yet, the releaſe remaineth good, becauſe it was executed. 32. *H.* 8. *Br. Dareinement* 18.

A feoffment made to the uſe of ones will if his will be declared before or at the time of his feoffment; it cannot be altered, becauſe it is executed. 20. *H.* 7. 11.

Otherwiſe it is of his will declared after.

Poſſibility of things.

And therefore

40. Nothing to be void, that by poſ-

sibility may be good.

15. H. 7. 10. Lands given to a married man and another mans wife, and the heirs of their two bodies; is a good estate in tail (and that presently executed as some think) for the possibility that they may entermarry.

1. H. 4. 1. A mesualty is given in tail, reserving a rent, this is good; for the tenancy may escheat to the donee, and then the donor shall distrain for all his arrerages.

41. E. 3. 11. b. A man hath issue a daughter, and leaveth his wife priviment infeint: the wife may detain the charters of her husbands lands from the daughter, for the possibility that it may be a son that she goeth withall.

42. A mutual recompence.

An assumption or promise doth then only bind, when it is made upon good consideration of another thing.

Cestui qui use may grant his use without consideration, as he may his horse or other chattel: but he cannot raise a use without good consideration. And this consideration must be some cause or occasion meritorious, amounting to a mutual recompence in deed or in law.

A Writ of annuity shall be maintained by a Parson against a Vicar, upon an Ordinance of the Ordinary, if there be *Quid pro quo*.

In Actions.

43. It yieldeth favour, when for the doing of it there is,

Neceſſity.

Funeral expences ſhall firſt of all be diſcharged by executors. *Br. executer 172.*

A man may milk a Cow that he hath by return irreplegiable. And that is for the neceſſity.

A man in his own defence for the neceſſity of the ſaving of his life: and a champion in a Writ of right for the neceſſity of trial, may Kill another. *4. E. 6. 19.*

Whither refer

44. Conformity, which is a kind of neceſſity.

Rent muſt be demanded, though no man be upon the land to pay it.

Where an Infant in ward marrieth himſelf, yet to have the forfeiture of the marriage, the Lord muſt tender him one. *Br. for. mar. 12*

He that pleadeth in the avoidance of a fine, That the parties to the fine had nothing, muſt ſhew who had. *40. E 3. 30. b.*

But it is not traverſable, but only ſhewed for conformity.

45. Of Colour.

41. E. 3. 28. If the heir endow the ancestors wife, though she were not dowable, yet she shall hold in dower.

22. Ass. pl. 64 Where a Court hath no colour to hold plea (as a Court Baron of land not holden of the Mannor) all is void.

But where there is colour (as if a Court Baron hold plea of land within the Mannor) though it be by plaint, where it should be by Writ original; yet the judgment rendred, is only voidable by writ of Errour.

A woman grants a reversion, and marries with the grantee, if the tenant pay him the rent generally, it is no attornment: for he hath colour to pay it him, as seised in the right of his wife.

46. It prizeth acts in Law higher than those that are done by ỹ party.

49. E. 3. 15. Upon the grant of a rent, the Tenant cannot attorne nor put the grantee in possession by an oxe or such like, because it is another thing: but upon the recovery of a rent, the Sheriffe may.

Littlet. Parceners may compel partition, so cannot Joynt-tenants, nor Tenants in common.

2 & 3 P & M. 134. b. For equality of partition among Coparceners, a rent granted shall be a fee simple without words (heirs) and issuing out of the

29. Ass. pl. 23. lands, without so expressing it in the grant.

a 2. H. 7. 5. Also things that otherwise cannot, may

passe without deed, as a rent, reversion (b) 21 E. 3. 7
seigniory, way, avowson, composition to (c) 11 H. 4. 3.
present by turn. (d). 28 H. 8 Dy. 29

Parceners may have a *quare impedit* one against another (that is, the eldest daughter may have it against the rest, if she be disturbed of her presentment) Fitz. N.B. 34

So cannot Joyntenants, nor Tenants in common.

46. It reputeth that men will alwaies deal for their own best advantage.

And therefore

47. Believeth against the party whatsoever is to his own prejudice.

For the time of doing things:

It countenanceth more

48. Things done in time of peace, than in time of war.

A disseisin and discent in time of war, shall not toll the entry of the disseisee. *Litt.* 97.

Usurpation in time of war, gaineth no possession; but the other may have an assize of darrein presentment (that notwithstanding) if his ancestor presented last before. 7 E. 3 *darrein presentment* 2. *Fitz. N.B.* 31. I.

49. Things done in the day more than in the night.

1. Mar. 172. b. Rent payable at a day the party hath all the day till night to pay it: but if it be a great sum, as 500 or 1000 l. he must be ready as long before the Sun set, as the mony may be told: for the other is not bound to tell it in the night.

A man must not distrain in the night time for rent behind.

Where things are fit to be straitned to a time, it extendeth (according to the nature of the things.)

50. Sometimes a whole day sufficient.

Where goods are lost in war, and recovered from the enemy by another of the Kings subjects, the owner shall have them again, if he make fresh suit before the Sun set, else not.

51. Sometimes a whole year.

The Lord loseth his villain for ever, if the villain flee into ancient demesne, and there continue a year and a day, without claim of the Lord.

Recovery in a Writ of right, and fines executed, bind all persons though they have right, that lay not to their claim within a year.

The King cannot grant a protection to endure longer than a year.

52. The third offence it esteemeth more heinous.

The third Writ not returned by the Sheriffe, is a contempt, whereupon an attachment lieth.

Politicall precepts follow.

The Law favoureth

53. Things for the Commonweal

A man may justifie the doing of a wrong in things that sound for the Commonweal. 29. H. 8. Dy. 36. b.

As in time of war, to make Bulwarkes in another mans soyle without licence. To ease ones house on fire, in safeguard of the neighbours houses.

A Sheriffe may break open the doors of ones house to take a felon. But not to serve a *Capias* in an action of Debt or Trespass: for that is a particular case, and not for the Commonweal.

Fishermen may justifie their coming upon the land adjoyning to the sea, to drie their nets: for fishing is for the Commonwealth and sustenance of all the Realm. 8. E. 4. 18. b.

A milstone that is lifted up to be picked and beaten, cannot be distrained, for it 14. H. 8. 25.

remains parcel of the mill, which is a thing for the Commonwealth.

22 E. 4.49. Things brought into an Inn or Fair, or Market; or cloth lying in a Taylors shop, or a horse that is a shoeing, shall not be distrained.

Publique quiet.

And therefore

54. Common error goeth for Law.

2 R. 3. 7. An acquittance made by a Mayor in his own name only (where the Town is incorporate by the name of Mayor, Sheriff, and Burgesses) shall be allowed for good, if there be an hundred precedents and more of like acquittances. And that is for common quietness.

Manxels case f. 2. Whether a common recovery be a bar unto an estate tail or no, is not to be disputed, because a great part of the inheritance of the Realm doth depend upon it.

Of this kind are those Decemnicks.

The husband and the wife are one person.

And therefore

The wife is of the same condition with her husband.

Fra

Franck if he be free, Denisen if he be an Englishman, though he were a neit before or an alien born. *Fitz. N.B. 78. Abridgement of assizes per Denisen 2.*

55. They cannot sue one another, or make any grant one unto the other, or such like.

If the (*a*) woman marry with her obligor, the debt is extinct, and she shall never have action against the Co-obligor (if another were bound with him) because the suit against her husband, by inter-marriage was suspended. And therefore being a personal action, and suspended against one, it is discharged against both. (*a*) *21 H. 7. 29. b.*

So if a feme sole baile goods to one, and marry with the bayle.

Likewise the husband cannot infeoffe his wife, but upon a feoffment made unto her by a stranger, he may deliver seisin unto her by Letter of attornie; for thereby himself giveth nothing. *Park. 40.*

56. Upon a joint purchase during the coverture, either of them taketh the whole.

If the husband alien land &c. so given she shall recover the whole, in a *Cui in vita* after his death, and the warrantie of one of them or his ancestors, is a bar of the whole against them both. *39. H. 6. 45. 21 R. jud. 63.*

And if a feoffment be made to the husband and wife, and a third person; the third *Littlet. 65.*

third person taketh one moiety, and the husband and wife the other moiety.

The husband is the womans head.

And therefore

58. All she hath is her husbands.

The personal things she hath are meerly his; but real things, whether land, rents, &c. or chattels real, and things in action he hath only in her right: yet so as of real chattels and things in action, he may dispose at his pleasure, and shall have the real chattels if he over live. Of things in action, her self may dispose by will.

Litt. 1. 148. If Tenant in tail enfeoffe a woman and die, and his issue within age take her to wife, he shall be remitted, and the woman now hath nothing: for he cannot sue any formedon in this case, unless he will sue against himself, because by the entermariage himself is seised in her right.

14. *Eliz. Ploy.* 418. If one that hath a lease for years, grant his terme to a feme Covert, and another, or if a feme sole and another be joint-tenants for years, and she take a husband, yet the estate of the feme and joynture doth continue, so as the survivor of the wife, or of the other shall have the whole: and if a stranger oust them, her husband and she must joyne in an *ejectione firme*, and the feme shall have judgment as well as the husband;

husband. And (a) in pleading he may say, That they are possessed in her right. Neither can the husband where the wife hath a term for years, either devise it to another by his will (for she hath an estate in it before and at the time of his death, which preventeth the devisee) or grant a rent charge out of it, for she surviving is remitted to the term, and therefore shall avoid the charge, but by an expres act he might in his life time have given it away. But if a woman having Chattels personal take a husband, the law divesteth the property out of her, and vesteth it in her husband only.

(a) 1. *Eliz. Ploy.* 191.

14. *Eliz. Ploy.* 419.

14. *Eliz. Ploy. Ibid.*

And if goods be given to a feme Covert, and another, the joynter is straight way severed, and the husband and the other are Tenants in common; and the executors of the husband shall have all the goods that were his wives.

11. H. 7. 29.

But in an action of debt upon arrerages of an accompt (where one was receiver to the feme whilst she was sole) they both must joyne, and that although the auditors were assigned during the coverture for the very cause of action, that is, the receipt (whereunto the assignement of auditors is but a thing pursuant) was in her right; yet the husbands release of an obligation made to the feme, or where goods were taken from her whilest she was sole, shall be good against the wife if he dy. But if he dy without making such a release, the wife shall

16. E. 48.

7. H. 6. 1.

shall have an action upon the obligation, and not the Executors of the husband: Likewise the Wife surviving, or her executors if she dy, shall have those things in action, and not the husband; or she may make her husband her executor, and then he shall recover them to her use. But a lease for years, which the wife hath, shall be the husbands, if she dy before him: for that is a thing in possession and not in action.

39 H. 6. 27.

1 El. Ploy. 191

59. Her will is become his will and subject unto it.

Upon a feoffment to a feme Covert she taketh nothing unless her husband will agree; and where one is bound to feoffe the husband and wife, the husband's refusal is the refusal of them both; but where the husband and wife are joynt purchasors, the husband may make a feoffment and livery upon the land, which shall work a discontinuance, though the wife be in presence upon the land, and will not agree. If they bargain and sell the wife's land by Indenture, and the vendee grants unto them for the same a yearly rent, the acceptance of this rent, after her husband's death, doth not bar her of the land, though the acceptance be an agreement to the bargain, but the bargain being but a contract, is the bargain of the husband onely, and not of the wife: if she ma-

a releaſe, obligation, or ſuch like, it is meerly void. If both her husband and ſhe baile goods to one, they ſhall not joyne in an action of detinue, for it is only his bailment, and void as unto her. In an accompt upon a receipt, by the hand of the Plaintiffs wife, the defendant may wage his law; hereupon it is that the wife can never anſwer in any action without her husband. And if in an action of Treſpaſs againſt them, the wife come in by *cepi corpus*, and the husband doth not appear, ſhe muſt be let at large without any mainprize till her husband do appear; but he appearing, may anſwer without her, therefore a protection caſt by the husband ſerveth for the wife alſo, becauſe ſhe cannot anſwer without him.

Laſt come the Moral Rules.

60. The Law favoureth right.

When two are in a houſe, or other tenements, and one lay claime by one title, the other by another title, the Law adjudgeth him in poſſeſſion that hath the right to have the tenements. *Littlet*, 158.

And therefore

61. Suffereth things againſt the principles of Law, rather than a man to be without his remedy. A

4. 7. 40. A man that is outlawed may bring an action to reverse it, and outlawry there is no plea.

F.N.B. 69.b. The Tenant shall have a replevin against the Lord that did wrongfully distreine, though the Beasts be come back to himself, because he can have no action of trespass against him.

11.H.7.10. A man (after that judgment is passed against him) shall plead against the King a Charter of pardon, or any such thing done mean betwixt the verdict and the judgement, because against the King he can have no *Audita querela*. Otherwise it is against a common person.

Hateth wrong.

So that

62. No man shall take a benefit of his own wrong.

31.H.6.bar.60 A man is bound to appear before the Justices at a certain day, at which day he is in prison at the parties suit, so as he cannot come, the bond is sayed. Otherwise it is if he were in prison for felony, or any other misdemeanor, for that is his own fault.

27.H.8.11. & Br.Covert.2. An Infants appeal shall not stay till his full age, for the defendant shall not have advantage of his own wrong.

13.H.7.1. One in execution scapes, and the Gaoler

gets

gets him again, the party if he will, may have him to remain in execution for him still, for the escape is his own wrong.

And therefore,

63. Or it self prejudiceth no man.

If a feoffment be made to two joyntly, one of them cannot deraigne the warranty without the other. Yet if a Villeine and another purchase joyntly, and the Lord of the Villeine enter into a moiety, he may deraigne the warrantie alone, for his moiety: for there the severance groweth by act in law. 48. E. 3. 17.

He that misdemeaneth authority, that law giveth him (as if one come into a Taverne, and will not go out in seasonable time; or distreine for rent, and kill the distresse) Shall be a wrong doer *ab initio*. 12. E. 48.

Otherwise it is, if he misdemean an authority that another giveth him. As if I lend my horse to one to ride to *York*, and he ride further, yet the riding to *York* shall not be unlawful. Nor a general action of Trespass lieth not against him upon an accord upon the case.

Especially for things that cannot be imputed to his own folly.

The Lord Chancellors servant impleaded at the common law, claimeth priviledge of the Chancery; and before it be discussed 35. H. 6. 31

sed whether he shall have it or no, the Lord Chancellor dyeth; yet his priviledge is allowable still, for the act of the Court to advise of it, shall not prejudice him.

33. H. 8. Br. Of rent a man shall have an ejectment of ward before seisin: for the law counteth him in seisin, in as much as he cannot have it before the day. Otherwise it is of land.

And therefore

64. Giveth not a man to shew that which by intendment he knoweth not.

2 Mar. 128. A man may plead that he was chosen Knight for the Shire by the greatest number, without shewing the number: for the election may be by voyces, or hands, or in other sort; hard to discerne the certain number, and yet easie to see who hath the greater number. 10. E. 4. 15.

One bound in an obligation to serve I. S. for seven years, *in omnibus mandatis ejus licitis*, shall plead that he did serve them lawfully, without shewing what service or in what commandment: for no servant can remember all. 4. E. 6. 46.

A man may aver a thing to be done by covine, without shewing how the covine was: for covine is a secret thing contrived between two or three, to the prejudice of another.

Truth

Truth.

And therefore

65. It disavoureth Fraud and covine.

If a woman that hath good title of Dower, cause I.S. to disseise the tenant of the land, and recovereth her dower against I. S. yet this is no good estate of dower in her, for she is privy to an unlawful act, which should be the means of her estate. 18 H. 8. 5.

66. Uncertain, whereby truth is inveigled.

A man grants all his trees and wood upon B. acre, that may reasonably be spared; this is a void grant, unless it be referred to a third persons judgment, what may be spared. 1 Mar. Dy 91.

If two several Writs of one self same thing against one self same man, be returned at one self same time, both shall abate. *Manxels case fol.* 10. *b.*

67. Variance.

If the Writ vary from the Obligation or other specialty in name, sirname, or such like, in an action of debt or annuity brought upon it; or the Count varie from the Writ. As in an action of debt of xx *l.* and declare but a debt of x *l.* both shall abate. 11 E. 4. 2. 8. E. 4. 2. *b.*

(a) 4. ass. pl. 2.
(b) 32 H. 6. 3.
(c) 7. H. 6. 32.

An (a) essoyn or (b) protection varying from the original Writ in the quantity of the Tenancy, or the name of the party, shall be quashed: and the Chancellors servant bringing a Writ of privilege varying from the original Writ (as if the original be a Writ of trespass, and the privilege in *placito debiti*, or the original an action of Debt of 44 l. and the Writ of privilege in *placito debiti* of 42 l.) it shall be disallowed.

Departure also when one fortifieth not the matter of his plea that went before, but cometh in with a new matter, is a kind of variance, & maketh the plea naught. As if the rejoynder be a matter puisne underneath the matter of his bar, & not above and going before it: As in an action of Trespass, the defendant pleadeth a discent unto him of the land, the plaintiff saith, that after the discent the defendant infeoffed him: Now if the defendant rejoyn, that the feoffement was upon condition, and he entred for the condition broken; this is a departure: for the matter of the bar (that is, the discent) is before the matter of the rejoynder, that is to say, the entry for the condition broken, whereby the feoffment is avoided. So if in an assize the defendant pleadeth the feoffement of I. S. and the plaintiffe maketh title to himself by discent, and that he was disseised by I. S. who infeoffed the defendant; or that he infeoffed I. S. upon condition, who brake the condition, and

terwards infeoffed the defendant, &c. Now if the defendant ſay, that after the diſſeiſin (or condition broken) and after the feoffament of I. S. to the defendant, the plaintiffe did releaſe to the defendant, or confirm the ſtate of the defendant, this is a departure, for that is a matter that groweth after the feoffement pleaded in bar. But if he plead ſuch a releaſe or confirmation from the plaintiffe to I. S. that is no departure; for it is a matter before the feoffement, or in an action of treſpaſs for goods, if the defendant entitle himſelf by the gift of I. S. and the plaintiff ſaith that himſelf was poſſeſſed till I. S. took them from him and gave them to the defendant. Now the defendant may ſay, that after the taking, the plaintiffe gave them to I. S. who gave them to the defendant: For although the defendant might have pleaded theſe things at the beginning, yet, in as much as it is purſuing, and fortifieth his bar, and no puiſne matter underneath the title of his bar, but ſtands, and above the matter of his bar, therefore it is no departure. So a plea in bar which is intendible at the Common Law, cannot be maintained by a matter of cuſtom or by Statute Law. As in an aſſize the Tenant pleadeth in bar a releaſe unto himſelf of the land, being deviſable by the cuſtom: the plaintiffe ſaith, that the Deviſor was within age at the time of the Deviſee. Now if the Tenant ſay, that by the cuſtom there, an Infant

of fifteen years of age may make a de-
vise; this is a departure. For the custom
pleaded in bar shall be intended of those
that may make a devise by the Common
Law. So if in an action of trespass the
defendant plead in bar a lease for fifty
years from a house of Religion, and the
plaintiffe avoid it, by reason it was made
within a year before the dissolution, and
so void by the Statute 31 *H.* 8. Now if the
defendant will alledge, that by the same
Statute it is provided, that all such leases
shall be good for xxi years, and so main-
tain the Lease to be good for so many
years, this is a departure. Or if one plead
a Fine, and that being avoided because the
parties to the Fine had nothing, will main-
tain the Fine to be good by the Statute 1
R. 3, because he that levied the Fine, was
Cestiqui use.

68. Contrariety.

21 *E.* 4. 36. An Obligation is made *solvendum* [illegible]
quam. This *solvendum* is void, and the thing
presently due.

A. is bound to B. *Solvendum eidem* [illegible]
4 *E.* 4. 29. This is a good Obligation, and the *Solvendum* void: for the plaintiffe may declare
upon a *Solvendum* to himself.

11 *H.* 7. 21. *b.* In a trespass *de domo fracta & muru[illegible]*
dem domus fractis. The defendant can-
plead not guilty to the breaking of
house, & just sic the breaking of the wa[illegible]

for the house and walls are all one; and he cannot of the same thing both justifie and plead not guilty: for by the justification, he acknowledgeth himself guilty. So one is contrary to another. 2. & 3. P. & M. 153.

A Feoffement in fee is made of two acres, unto two men *habendum* one acre to one man, and the other acre to the other man. This is a void *habendum*: for the premises give him an interest through both acres, and the *habendum* excludeth him from having any thing to do in one.

A lease of a Mannor excepting the services, the exception is void; for it is parcel of the thing let.

And therefore

69. It will not drive a man to justifie that he goeth about to defeat.

He that bringeth an assize of the mastership of a Chappel against I. S. shall not need to name I.S. the master of the Chappel, because the plaintiffe is to disprove his interest. 10. H. 7. 9.

Diligence.

And therefore

70. It hateth Folly and Negligence.

After a recovery in a Writ of right, if a stranger that hath right, lay not to his claim within a year and a day, he is barred 5. E. 3. 222. Heru.

for ever. For *vigilantibus & non dormientibus jura subveniunt.*

Lit. 95. A discent cast during the coverture (where the wife is disseised) barreth her not of her entry after the husbands death. But if a feme sole be disseised, and then taketh a husband, there a discent during the coverture taketh away her entry: for it was her folly to take such a husband that entered not in time.

Speeding of mens causes. And therefore:

71. It hateth Delaies.

He that pleadeth a Record in delay (as
3. H. 6. 15. b. to prove the plaintiffe excommunicate) must have it ready to shew. Otherwise it is, if he plead it in bar.

12. H. 7. 3. In dilatory pleas both defendants must joyn.

8. H. 7. 9. A plea in bar that is dilatory, must be good to every common intent.

72. Unnecessary circumstances.

2 H. 6. 1. b. One that is in Court ready to joyn with the defendant, may do it without Proces. As the vouchee the Plaintiffes Lessor being prayed in aid of, when the def. in a replevin avoweth upon him, or the mesne when the Lord paramount avoweth upon him. But joynder in aid cannot be by Attorney without Proces.

One

One that is a debtor to the King of Record in the Exchequer, if he be seen in the Court, may be brought in to answer without Processe. 1 H. 6. 4. b.

73. Circuit of action.

When a father infeoffeth his son and heir with warranty, and dieth. Now the son in a *precipe* brought against him, may vouch the feoffee of his father: for the Law will not suffer to vouch himself, and when he cometh in as vouchee, then to deraign the first Warranty for the circuit of vouchee. *Manxol. case. fol. 7. b.*

Upon the grant of a Ward with warranty, the defendant in a Writ of Right of Ward, may rebutt the plaintiffe by that warranty, and shall not be driven to bring an Action of Covenant for avoyding circuit of action.

So in an action of waste upon a Lease for years by deed. And in the same deed the lessor granteth to the lessee, that he shall not be impeached of waste, the lessee may plead this in an action of waste.

The Law construeth things With equity and moderation. And therefore

74. Restraineth a generall act, if there be any mischief or inconvenience in it.

Tenant for life lets to another for life *Litt. 120.*

without expressing whose lives, it shall be taken for the Tenants own life; for else it were a forfeiture of his estate.

A house that hath Copyholds and other lands usually occupied with it, is let for years, with the lands appertaining; yet the Copyholds passe not without special naming: for then it were a forfeiture of them.

A Corody granted to one and his servant to sweat his Messe, he cannot bring a servant that hath some filthy or noisom disease.

Estovers granted out of a Mannor, the grantee shall not cut down fruit trees.

A Common granted to one for all his beasts, yet he shall not have Common for Goats, nor Geese, nor other beasts, not Commonable.

A feoffment of all his lands in the town of D, with Common *in omnibus terris* &c. this Common shall be intended in D. only, and not elsewhere.

75. Moderateth the strictnesse of the Law it self.

By abridging, diminishing, and taking away the severity of it, and mollifying the hardnes thereof, a great vertue as *Plowden* calleth it, and may appeare by *Aristotle*, who treating of it, calleth it, *A correction of the Law, wherein it is [illegible] wanting, because of the generality of it.*

It is no treſpaſs for a man to beat his Apprentice, which is reaſonable correction.

No more is it to carry away a mans wife againſt his will, to a lawful end. As to ſue a divorce againſt her husband, or to have the peace of him before a Juſtice of peace.

A great part of the depth and learning of the Law (if you go to the primative reaſon of it) ſtandeth upon this, and that other kind of equity that went before. Of both which *Plowden* in that caſe diſcourſeth at large, and well ſetteth forth the nature of them, ſo far as concerneth the interpretations of Statutes. But they have a further and more ſhining uſe in the expoſition of Common Law it ſelf, as in the caſes before put.

To the beſt.

And therefore

76. **Every act to be lawful when it ſtandeth indifferent to be lawful or not.**

If the [illegible] come upon the ground, it ſhall be intended that he came to ſee if waſte were done.

If the diſſeiſee come, it ſhall be taken that he meant to be remitted.

In an action of Treſpaſs, two iſſues are joyned triable in two counties, one in *London* another in *Middleſex* only (without ſaying which of the iſſues it ſhould try;) this ſhall be taken to try the iſſue in Mid. only; for ſo the *venire facias* is lawful, and 11 *H.* 7. 5.

not

not in both counties, which is against law. And therefore it is a discontinuance of the issue in *London*, and not a miscontinuance.

CHAP. IV.

Of Law Constructions that are natural.

THus far of Rules drawn from other Sciences. There follow those that are proper to our selves: which we call Law-constructions. And are natural or feigned.

Of the first sort we have two notable grounds.

Law construeth things.

Reasonably.

And therefore

77. With a reasonable intent.

A feoffement by deed of a Mannor, with avowson appendant, and no livery made, the avowson passeth not: yet they may pass without livery, but the meaning was, the mannor and it should pass together.

A bargaine and sale of land, and a reversion by deed not inrolled, the reversion passeth not no more then the land, though the deed without inrolment may pass the reversion:

reversion: but it was meant they should pass together.

One reciting by his deed, that where by prescription he hath used to find a chaplein, because some controversie hath grown of it, granteth by the same deed to do it; this determineth not the prescription, for the intent of the deed (reciting the prescription) was to confirm it, and not to make a new grant. 21. H. 7. 5.

78. According to the effect.

A deed delivered by an infant, cannot be delivered again at his full age: for it took some effect before, and was but voidable. 1 H. 6. 4.

But a deed delivered by a feme Covert, or a release delivered to one that hath nothing in the land, may be delivered again (viz.) when she cometh to be sole, or the party to have somwhat in the Land: for the first delivery was meerly void, and took no effect at all.

So that

79. He that cannot have the effect of a thing, shall not have the thing it self.

The King shall not be received upon default of Tennant for life, because the demand cannot have the effect of the receit, to count against him; which most can do against the King, but to sue him by petition. 4 Edw. 241.

Two Abbots cannot be Joyntenants: Litt.

for

for they cannot have the effect of it, which is survivorship.

80. To the most validitie.

Litt. 140.b. Tenant in taile makes a lease for life, this shall be intended the Lessees life.

An Annuity granted *pro consilio impendendo*, or a feoffment to *ad erudiendum filium*, or *ad solvendum* x s. is a condition, without words conditional, because else the party hath no remedy.

And therefore

81. When many joyne in an act, it maketh it his act that may do it.

2 & 3 El. Dy. 191. A use limitted to begin when ones eldest Son is married by I. S. the Son (being a ward to the King) is married by the King and I. S. yet no use riseth, for it is the sole marriage of the King.

A Patron of a Church suffereth an usurpation by six months, and then grants an annuitie to I. S. till he do promote him to a benefice. After, he and the usurper joyn in a presentment of I. S. yet the annuity is not determined.

Littlet. The Disseisee and the heire of the disseisor, in by discent make a feoffment by one deed and Livery; this is the feoffment of the heir only, and confirmation of the disseisee.

82. When

82. When two titles concur, the best is preferred.

One is disseised, and the disseisor lets the land to the disseisee for term of years, or at will: now if he enter, the Law shall say, he is in of his ancient and best title. *Littleton.*

83. Things to be done by him that hath most skill to do them.

An Obligation upon condition, that a Bell shall be brought by the Obligee, to the Obligors house, (being a Brasier) and there weighed and put in fire: and then the Obligor to make a Tennor of it, runable with other bells. 9 E. 4. 4.

The Obligor must weigh it, and put it in fire, (not being expressed who shall do it) for it belongs to his office, and therefore he hath most skill to do it.

So upon condition that the Obligee shall bring to the Obligors shop (being a tailor) three yards of cloth which shall be shapen, and the Obligor to make the Obligee a gown of it: the Obligor must shape it.

A Merchant agreeth with the Kings collectors, that his Merchandize shall be weighed at the Kings beame, and the King shall have his subsidie as it riseth: the Collector must weigh it. 4. E. 6. 15.

Issues joyned must be tried by them that have most skil, (*videlicet.*) An issue upon 4 El. 230. b.

the

the law, by the Justices learned in the law.

Littl. 21. Attendance upon the King (Scotland) in war xl. days (as tenant by elcuage must) by certificate of the Kings Marshal.

11. E. 4. 3. 6. Disseisin of an office in the commen-place, or razing of a Record there, by the Filizers and Attornies, attendant in that Court.

84. Void things good to some purpose.

1 & 2. P. & M. 107. Lessee for twenty years takes a Lease for a yeare (to begin presently) upon condition if such a thing be not done, to be void, though the second lease be void upon the condition broken, yet the surrender remaineth good.

10. H. 7. 22. A feoffment upon condition to be void as if it had never been, yet the feoffee shall have an action of Trespass (after the feoffor entry for the condition broken) for a trespass done by the Feoffor before.

85. One thing to enure as another.

21. H. 7. 13. The King grants to a Town *eadem libertates quas London habet*, it shall be intended the like. The Lessor enfeoffeth his Lessee for life, by *dedi & concessi*, this shall enure as a confirmation.

15. H. 7. 7. One grants the third presentment to an advouson, and dieth, his heire shall present twice, and his wife shall have the third for her dowet, and so the grantee shall have

fore but the fourth.

The King pardoneth one the making of a Bridge; this is only good for the fine: but yet he must make the Bridge, because the Kings Subjects have interest in it. 37. H. 6. 4.

66. In one thing, all things pertain to be included.

One makes a Lease, excepting a close, wood, &c. now the Law giveth him a way to come to it. 14. H. 8. 1.

Where the King is to have mines, the Law giveth him power to dig in the Land. 10. E. 317.

Upon a grant of Trees, the Grantee may come upon the land to cut them down, and with his Carriage to carry them through the land. And the Vendee of all ones fishes in his pond, may justifie the coming upon the banks to fish, but not the digging of a trench to let out the water to take the fish, for he may take them by nets, and other devises. But if there were no other means to take them, he might digge a trench. 2. R. 2. Bar. 397.

67. Strongest against him that doth them.

Two Tenants in common grant a rent of twenty shillings, the grantee shall have forty shillings. But if they reserve twenty shilling upon a lease, they shall have only but twenty shillings. 3 & 3. P. & M. 140. b. & 161. b.

One

2. M. 104. One bound to pay L. S. twenty pound *extra festum natalis domini*, it is no plea to say he hath paid it, but he must shew when else it shall be taken he paid it after the feast.

And therefore

88. A man shall not qualifie his own act.

21 H. 7. 2. 3. b. The obligee releaseth his debt till Michaelmas, the debt is gone for ever.

18. E. 3. Var. 33. A reversion of three acres of land is granted, the Tenant attornes for one, this is a good attornment for all.

17. El. Dy. 339. A parson makes a Lease for xl. years, the Patron and Ordinarie confirm it for xl. This is a good confirmation for the whole xl. years.

The construction which otherwise law would make is altered by the parties.

89. Special agreement.

40. E. 3. 5. Lessee for years is excused for waste, if the houses be blown down by sudden storm or tempest. But in that case if he covenant to keep reparations, an action of Covenant lieth against him.

Pask. 55. E. & 56 E. Two Joyntenants exchange an acre of land with another, they should hold the land taken in exchange jointly. But if they exchange to have that acre in common between them, they shall be Tenants in common.

90. Spe

90. Special words.

A lease reserving a rent, the heir of the lessor, after his death, shall have the rent: otherwise, if the lease be reserving to the lessor. 27 H. 8. 19.

A feoffement in fee to one and his heirs with warranty to the feoffee. This warranty goeth not to the heir. 30 H. 8. Dy. 42. b.

91. Surplusage of words.

The Ordinary may refuse him generally, that demands his Clergy without shewing cause. But if he shew cause which our law alloweth not (as because he hath not his tonsure or *ornamentum Clericale, &c.*) he shall pay a fine; and yet be driven to take the Felon. 9 E. 4. 28. b. Lit.

In a *valore maritagii*, and count of a tender of marriage to the def. The tender is traversable; if it were not before. 9 El. Dy. 255. b.

An information upon a statute made such a day, and the day mistaken is naught, though he need not to have recited the day. 6 E. 6. 84.

In an action of debt by I. S. Parson of D. no such town as D. is a good plea: yet he needed not to have named himself parson of D.

A writ of forging *diversa facta & munimenta*, and count but of one the Writ shall abate: yet he needed not to have said in his Writ, but only *factum*.

CHAP. V.

Of Fictions in Law.

A feigned construction which we call a fiction in law, is when in a similitudinary sort the law construeth a thing otherwise than it is in truth. And is of the person, thing, action, and the circumstances there of time and place.

Of the Person.

92. Things done by another, are as if they were done by ones self.

27. H. 8. 24. A promise to ones wife in consideration of a thing to be performed by the husband: if the husband upon his coming home agree and perform the consideration; he may plead this promise to be made to himself.

If my servant sell my goods, and I agree, I shall have an Action of Debt, supposing he bought of me.

25. El Earl of Leic. 6. A lease for years is made, and a letter of Attorney to deliver possession to the lessee: if the Attorney deliver possession to the Attorny of the Lessee; it is a good possession, and pursuing to his authority.

Of the thing we have these two rules.

93. A thing that cometh in lieu of another to be as if it were the same

One shall recover in value against the heir (upon the ancestors warranty) lands which the heir took in exchange for lands descended. 18. H. 3. rec. va. 26.

A Mannor is given by fine, a *Scire facias* lieth of a Tenancy that afterwards escheated. 48. E. 3. 11.

If a Mannor descend to an heir within age, and after a tenancy escheateth, he shall have his age of it in a *Precipe* of the Mannor; it shall be assets by discent, & he may vouch of his tenancy by reason of a warranty made of the Mannor; for the tenancy cometh in lieu of the services. 6. H. 4. 1.

94. A thing to be all one with that whereunto it doth amount.

The maxim of a bastard eigne, is that the *mulier puisne* must make an entry upon him, or else he gaineth the right: yet a continual claim made by the *mulier puisne* defeateth his right: for it amounteth to an entry. 14. H. 4. 9.

A Lease for a thousand daies, is a lease for years. 14. H. 8. 13.

A lease for years and a release amounteth to a feoffement. Brook.

If a man licenseth one to occupy his land 5. H. 7. 1.

for a year. This is a leaſe for a year.

And therefore

95. A thing that ſhould not be done, to be as if it were not done.

18 El. Dy. 361. One grants a rent charge, without ſaying *pro ſe & hæredibus*, and dieth. The grantee brings a Writ of annuity againſt the heir, and hath judgment to recover: yet he may diſtrein afterwards: for the heir was never chargeable. So that upon the matter, it makes no election.

20 El. Dy. 362. A man makes a leaſe for years of a houſe with certain implements, reſerving a rent, the Executors after the Teſtators death, receive the rent, yet it is no aſſets in their hands: for the whole rent belongeth to the heir.

96. So of a thing done in a time that it ſhould not.

1. E. 6. Br. 18. A man ſeiſed in fee, lets for ten years, & after ſelleth the land, and taketh it back to him and his wife, & then the husband and wife let it for twenty years, reſerving a rent: the husband dieth, the wife accepts this rent during the firſt ten years. By this the ſecond leaſe is not affirmed, for the acceptance of a rent before the leaſe begin neth, and ſo before any rent be due, is no acceptance at all.

21 El. 563. A matter pleaded or diſcloſed out of time and courſe, is as if it were not pleaded at all.

all. As if one bring an action of debt upon an obligation, & count that the defendant was of full age at the time, the defendant shall not travers this; but only say he was within age, and the traverse must come of the plaintiffes part.

To the circumstance of time, these two rules pertain.

Priority of time is imagined in things.

97. Done together.

One deviseth a term for years to his son, and that the wife shall have it during the sons minority. This is first a devise to his wife, and after to the son when he cometh of full age. 21 *El.* 540.

One grants his reversion of lands, and by the same deed granteth a rent out of these lands to another, and delivereth the deed to both at one self same time. Yet it shall inure first as a grant of the rent to the one, and then as a grant of the reversion to the other.

98. Happening in an instant.

A mesualty discends to the Tenant of the land, though the mesualty be at the same instant extinct, yet the tenant shall pay relief if he be of full age, or be in ward if he be within age (*viz.*) where it is holden by knights service. 11. *H.* 7. 11.

Land is given to A. for the life of B. the remain- 7 *H.* 4. 6.

remainder to the right heirs of B. A. dieth, the remainder takes effect before any occupant.

9. E. 4. 21. A man exchangeth land for a rent charge out of the same land. This is good enough though they be in an instant (whereby the rent should be drowned in the land) for the law accounteth the exchange of the land to be first perfected.

99. Things relating to a time long before, be as if they were done immediatly from that time.

Li. 91. When the wife is endowed by the heir of her husband's lands, she shall be said to be in immediatly from the husband. And therefore if the husband were a disseisor of the heir in by discent, yet the disseisee may enter upon the wife.

36. H. 6. 7. Goods taken out of the possession of an executor who refuseth, and administration is committed to I. S. I. S. may have an action of trespass, supposing they were taken out of his possession: for he shall be said an Administrator from the very time of the death of the intestate.

These rules of common reason do many times crosse and encounter one another, which is the greatest difficulty that we find in the arguing of our cases. But to help this, the general ground is according to the former rule. ( ) that

100. Thos

100. Those prevail that carry the more excellent and perfect reason with them.

Tenant for life makes a leaſe for life without naming whoſe life, this ſhall be intended for his own life (Rule 74.) for elſe it were a wrong. But if a tenant in tail make ſuch a leaſe for life, this is a diſcontinuance, and for life of the grantee (Rule 86.) for it is ſtrongeſt againſt the grantor, and moſt beneficial for the grantee. *Lit.* 110. *b.* *Lit.* 140. *b.*

Things executed where the husband is ſeiſed in the right of his wife, ſhall not be avoided by divorce: as waſt committed, receit of rent, wards, or preſentments that have fallen, gifts made of the wives goods, &c. Rule 39. But otherwiſe it is in matters of inheritance, as if the husband diſcontinue and charge the wives lands, releaſe or manumiſe villains, &c. Rule 30. 32. *H.* 8. *Br. Dcr.* 18.

A feoffment is made with warranty, the feoffee dieth having iſſue two daughters, who make partition of the land. This warranty ſhall be divided notwithſtanding the partition which is their own act, and therefore not ſo much favoured, Rule 46. For the land cometh to them originally by act in law, that is by diſcent, Rule 5. 28. *E.* 3. 20. *b.* *Br. gar.* 27.

If the Chancellor die before his ſervants pledge diſcuſſed in bank, yet it ſhall be ſtayed, notwithſtanding the cauſe of his pledge now be gone. (contrary to Rule 5.) but the reaſon is, for that once he had power, and the act of a third Perſon (that is by the Court) ſhall not prejudice him 35. *H.* 6. 3.

where no folly was in himself. Rule 63.

9 El. Dy. 264. b. The husband possessed of a term in the right of his wife, maketh a lease of parcel, rendering a rent, the wife shal have the residue of the term, but not the rent, Rule 9. notwithstanding it come in lieu of the land, Rule 93. and be as it were an accessary unto it, Rule 25.

Things may be done in the night time, notwithstanding, Rule 49. where there is a kind of necessity of doing them, then, Rule 44. as arbitrement made and delivered in writing, the last day after the Sun set, is good enough: for judgments and arbitrements require long advice.

11. H. 7. 5. So may goods be distreined in the night time for dammage feasant.

If one of the Chapter infeoffe Dean and Chapter, by that he himself shall take by his own livery, Rule 18. notwithstanding Rule 20.

Park. 41.

A man may do an act to himself, notwithstanding Rule 20. where the law cannot do otherwise, Rule 18. as a feme tenant in socage may endow her self, an executor pay himself, &c. Counts and declarations must be certain, Rule 66. yet things which contain a necessary implication are good enough, Rule 94. As in an ejectione firmæ a count of a lease made by tenant for life, it sufficeth to say, that the lessor is yet seised without alledging his life expresly, In an information upon the Statute of usury, a count that the defendant took per usuram, &c.

13. H. 8. 15.

14 El. Dy. 347.

mediu

medium corrupte mutationis, where it should be *accomodationis*, yet it is good enough.

Corporal service as suit of Court &c. cannot be done by another, Rule 14. notwithstanding Rule 92. 7 H. 4. 2.

Matters of trust or authority, &c. cannot be granted over; because being strictly taken, they are esteemed to belong to the person, and therefore guided by Rule 15. Yet an office of skill and diligence to one and his heirs, may be granted over. So upon a Letter of Attorney to deliver seisin to A. he may deliver it to the Attorney of A. for that upon the matter is a possession delivered to himself, Rule 22. 12 El. 379. b.

Tenant in taile makes a feoffment with warrantie, and leaveth to descend a reversion in fee-simple expectant upon an estate taile, which I. S. hath; this is no assets, for it may be tolled by a common recoverie (and therefore the law esteemeth it as if it were so.) But it seemeth otherwise of a reversion depending upon an estate taile of land which the issue himself hath, for it were the folly of the issue in taile to cut it off, Rule 70. 25 El. Earl of Leic. case.

CHAP.

CHAP. VI.

Of Laws Positive.

AND as much of Laws Positive.

The Law of nature and of reason, or the Law of reason primarie & secundarie, with the rules framed and collected thereupon. Which three are as the Sun and the Moon and the seven Stars, to give light to all the positive laws of the world.

Positive are laws framed by their light, and from thence come the grounds and maximes of all Common Laws: for that which we call Common Law, is not a word new and strange, or barbarous, and proper to our selves, and the law that we profess, as some unlearnedly would have it, but the right term for all other Laws. So *Euripides* mentioneth the Common Laws of *Greece*: and *Plato* doth define it, speaking of the reasoning facultie, saith he which being taken up by the common consent of a Country, is called Law, and anon he nameth it

the golden and sacred rule of reason, which

we

e call Common Law. The place is very
28 e, it openeth the original and firſt
ginning of the Common Law, it ſhew-
the antiquity of the name, in effect all
e with that which ſince and by a later
me is called *Jus civile* (*quod quisque po-*
pulus ſibi jus conſtituit, as *Juſtinian* ſpeak-
eth) it teacheth Common Law to be no-
thing elſe but common reaſon: but what
reaſon? not that which every one doth
frame unto himſelf: but refined reaſon,
Ea ratio adulpta atque perfecta eſt omnia-
rum rerum Jupientia, as *Tully* ſaith, and as *Plato*
there hath it, when it cometh to be
ſcipio or *decretum*. How?
generally received by the con-
ſent of all.

Therefore Laws politive, which are directly contrary to the former, lose their force, and are no Laws at all.

As thoſe which are contrary to the Law of nature. Such was that of the Egyptians, to turn women to Merchandize, and common wealth affairs, and men to keep within doors. And of the Thracians, which accounted idleneſs an honeſt thing, and ſtealing very commendable. So if it were made a law, that men might commit adultery, forge falſe deeds, &c. And this is manifeſt to all men. But becauſe the law of reaſon is known only to ſuch as are able to judge aright, and that but imperfectly (as

before

CHAP. VI.

Of Laws Positive.

A Word or two of Laws Positive.

The Law of nature and of reason, or the Law of reason primarie & secundarie, with the rules framed and collected thereupon. Which three are as the Sun and the Moon and the seven Stars, to give light to all the positive laws of the world.

Positive are laws framed by their light, and from thence come the grounds and maximes of all Common Laws: for that which we call Common Law, is not a word new and strange, or barbarous, and proper to our selves, and the law that we profess, as some unlearnedly would have it, but the right term for all other Laws. So *Euripides* mentioneth the Common Laws of *Greece*: and *Plato* doth define it, speaking of the reasoning facultie, saith he which being taken up by the common consent of a Country, is called Law, and anon he nameth it

the golden and sacred rule of reason, which

we

e call Common Law. The place is very able, it openeth the original and firſt beginning of the Common Law, it ſhew- the antiquity of the name, in effect all ne with that which ſince and by a later ame is called *Jus civile* (*quod quisque po- ulus ſibi jus conſtituit*, as *Juſtinian* ſpeak- th) it teacheth Common Law to be no- hing elſe but common reaſon: but what eaſon? not that which every one doth ame unto himſelf: but refined reaſon, *Qui cum adhibent quasi perfectam & omnia- ex ſuprema*, as *Tully* ſaith, and as *Plato* here hath it, when it cometh to be *opinio* or *decretum*. How?

generally received by the con- ent of all.

Therefore Laws politive, which are directly contrary to the former, have their force, and are no Laws at all.

In thoſe which are contrary to the Law of nature. Such was that of the Egyptians, to turn women to Merchandize, and com- monwealth affairs, and men to keep with- in doors. And of the Thracians, which ac- counted idleneſs an honeſt thing, and ſtea- ling very commendable. So if it were made a law, that men might commit adultery, forge falſe deeds, &c. And this is manifeſt to all men. But becauſe the law of rea- ſon is known only to ſuch as are able to judge aright, and that but imperfectly (as

before

before was shewed) therefore here the q
is harder, what laws may be said agr
ble and what repugnant thereunto. O
in general (which is sufficient for this p
and purpose) it is truly said, and all m
must agree, that laws in deed repugn
to the law of reason, are as well void, a
those that cross the law of nature.

**Positive Laws are sundry an
divers, according to the several an
divers constitutions of particula
places and countries.**

Such among the Jews were their Polit
cals, delivered by Moses, which so far a
they be positive, bind us not unto them
Such were the ancient law of the Grec
the xij. tables, and civil laws of the R
mans, and **such are the Comm
Laws of** England. And almost so many
people so many Laws. And as those Laws a
divers one from another, so one & the
same laws may be altered and changed
themselves, so long as no alteration is p
mitted against the two main Laws of N
ture and Reason.

The

The Second Book of LAW.

CHAP. I.

Of the Common Law of England, whereof the parts of the Realm, and of the persons in it. Of Custom and Prerogative.

THE Common Law of England is a Law used time out of mind, or by prescription throughout the Realm. For to shew that there is a Custom among Merchants throughout the Realm, to assigne Arrests over, is not good, inasmuch as that which is currant throughout the Realm, is Common Law, not Custome, and under the name of the Realm of England, it is plaine that (a) Scotland

Litt. 38. *That prescription is a usage time out of mind.*

(a) 8 *R.* 2. *cont.* and *claim.* 13.

(b) 2. Mar. 29. and Wales (b) much less (c) Ireland,
(c) 20. H. 68. not included. Neither is the main Sea
A fine with Proclamations according to 4. H. 7. shall not bar one in Ireland.
is to say, beneath the low water mark
cell of the Realm; for there the Adm
jurisdiction (which hath nothing to
things within the Realm) doth, only
(d) 22. ass. pl. 93.
The Statute 1. R. 2. c. 5. proveth the Common Law to be so.
die and not the Common Law. But
tween the high water mark and the
water mark, where by ordinary and
ral course, the Sea ebbs and flowes
Common Law and the Admiralty
divisum imperium, one upon the
when it is full Sea, the other upon
land, when it is an ebb.

(e) St. Hen. Constables. Co. 107.

Statutes 27 H. 8. cap. 26. Incorporateth Wales into England.

(a) 12. H. 7. 18 Fineux.
(b) Lit. consuetudo ex rationabili causa usitata privat. Communem legem.
The whole Realm is divided
to several Counties or Shires,
whole again into certain Hun
Towns: in many of which,
in divers Mannors whereof it co
to speak afterwards.
(c) Lit. 46. & 58.
(d) 8. H. 3. prescript. 60. 5. E. 4. 30.
As in Kent the Custom of Gav
for all the heirs males to inherit al
the wife not to lose her dower, no
heir his Land, though the husband
ancestor be hanged for Felony.
In London, if the Debtor be fugi
that the Creditor before the day of pa
ment may arrest him to find better sure
Lit. 37.

many Boroughs, the youngest Son, as
is all. The wife to have for her dow-
all her husbands lands; the land there
devisable by will.

County is a part of the Realm
erally governed by one Sheriff
der the King, but all Subject to the ge-
ral government of the Realm, and
erefore every County is as it were, an
tire body of it self, so that upon a feoffe-
ent of lands in many Towns in one
County, livery of seisin made in one par-
in any one of the Towns in the name
all, sufficeth for all the lands in all the
her Towns within the same County. But
a feoffement of lands in divers
unties, there must be livery of seisin
every County.

Also an exchange of lands in one and Lit. 13.
same County is good by parol, but
divers it must be by deed indented.

man is driven to take notice of all
things done in the same County, in case
sue not in another. As if an action
be brought against an Executor, 2. H. 4. 11.
pay the debts which he hath in his
to any other to whom the Testator
indebted, till notice of the action
ught against him, if the suit be in an
County, but not if it be in the same
, for there he must take notice
action at his peril.

An Inquest also shall not take notice of
ings done in another County, but be-
all are under one general govern-
ment,

meane, wherefore things done in seve
Shires shall be tried by a joynder of Co
ties, the Jury that trieth the prin
may take notice of a thing acteffa
though it be in another Shire. As in
actions of Trespass, if the defendant ple
an arbitrement in a Forraigne county, an
issue be taken upon it, and found for the
Plaintiffe; the Jury there must accept d
mages for the Trespass done in the oth
County.

21. H. 6. 51.

9 E. 4. 40.

Likewise in an action of debt against
Executor, who pleadeth, *ne unque* ad
nist, and giveth in evidence, a deed of
made unto him by the Testator in his
time in another County, the Jury must
it upon pain of attaint. So of a rele
pleaded to be made in another County
a writ of right.

There be in all thirty nine Shires, Ke
Sussex, Surrey, &c.

18. H. 6. 13.

A Town is a precinct anciently containing ten families, whereupon in some Countries they are called Tythings, within one of which Tythings every man must be dwelling and find sureties for his good behaviour, else he that taketh him into his house is to be amerced in the Leet.

Divers of these Towns have Hamlets in them, some speciall places there be in every County, but not any Town or Hamlet.

The persons within the realm

to be considered either as one entire body, or as particular persons. As one intire body it consisteth of the K. & common persons his subjects. *The King is the head of the Commonwealth,* immediate under God. I. H. 7. 10.

Him therefore carrying Gods stamp & mark among men, and being, as one may say, a God upon earth, as God is a King in Heaven: hath a shadow of *the excellencies that are in God,* in a similitude in a sort *given him*: Gods excellencies & honour standeth partly in things incommunicable unto other, partly in such as after a sort he maketh his creatures partakers of both: which the King is said to have some in truth, other by fiction, all by similitude from the divine perfection.

The first thing in God, and most proper to his sacred Majesty, is, the infiniteness of his nature; who, as the philosoper elegantly saith, only is that Circle, *cujus centrum ubiq; peripheria nusquam.* So say our books, that the King is almanner is every where, and present in all his Courts. F. N. B 21. b.

In a writ of error upon a false judgment given for the King, no *Scire facias* shall go forth *ad audiendum errores*, for the King is always present in court, & that is the cause that the form of entry in all suits for the King is *Henricus Hobart miles, Attornatus domini Regis generalis qui pro domino*

Rege sequit' ver' bis in Cur. &c. and doth not say, *Dominus Rex per Hericum Hobart Attornatum Suum, &c.* And therefore it is also, that the King cannot be *non suit*, that all acts of Parliament, which concern the King or General, and the Court must take notice without pleading of them, for he is in all, and all have their part in him.

25. H. 6. Br. nonsuite 68.
3. El. 231.

A second thing proper unto God, is divine perfection. In the King no imperfection can be thought, no *negligence*, no laches, no folly, no infamy, no stain or corruption of bloud. So as (b) homage aver deth not his grant, though it be of lands which he hath in his natural capacity.

(a) 35. H. 6. 26
(b) 3. Eliz. 213
(c) 1. H. 7. 4.

By (c) his taking of the Imperial Crown upon him, all attainder of his person is purged *ipso facto*.

The excellencies which God bestowed upon his creatures (for I will touch no more but those that the books of our Law do speak of, and such as are leading cases to the cases that you shall find there argued & debated) are first Majesty, Soveraignty, Power, Perpetuity, and then that noble complement of Justice and truth.

Bract. lib. 1. cap. 8.
2. H. 17. *grants* 33.

The Law, saith *Bracton*, gives unto the King *Dominationem & Potestatem*.

He hath absolute power over all, for by a clause of *non obstante* he may dispense with a Statute Law, and that if before the Statute, though the Statute say, such dispensations shall be meerly void.

The King cannot take, he cannot put from

from any thing but by matter of record. *Bract. ibid.*
And that is for the Majesty of his person. (a) *Stam. pra.* 731.
His supream Soveraignty makes him immediate under God. *Omne quidem sub eo* (b) 7. E. 4. 17.
& ipse sub nullo nisi tantum sub Deo, saith (c) 50. Ass. pl. 1
Bract. It makes all lands to be holden of 18. Eliz. 498.
him, every surrender unto him to be good, no action to lie against him, for who shall command the King?

Nay, acts of Parliament do not bind 4 E. 4. 21.
him, unless they concern the Common- 1. El. 223. &
wealth, or he be specially named. Neither 240.
is the King be joyntenant with any, 3. Eliz. 239.
though it be of land, or other things that
he hath in his body natural: For none
can be equal with him. And therefore if
two purchase land to them and their heirs,
and one be made King, they are now no
more Joyntenants, but tenants in Com-
mon. Lastly for perpetuity, the King ne- 4 El. 234.
ver dieth, but in Law it is said the demise
of the King, and a Gift unto the King,
without saying more, trencheth to his suc-
cessors.

To come to the other two; the power of 4. Mart. 177.
God is alwaies joyned with Justice & truth: *Potentia injuriæ est impotentia naturæ.*
to do wrong, to deal untruly, is not
impotency, but a thing of weakness and
infirmity. So it is with the King, he can-
not be a (a) disseisor, he can be no wrong- (a) 4. E. 4. 25.
doer, he is all Justice, he shall never be (b) F. N. B.
stopped. Judgment final in a Writ 143. b.
of right, doth not conclude him, for he is (c) 20. E. 3.
Truth, *Veritas & Justitia*, saith *Bract.* *Dr.* 45.
Solium ejus. They are the two suppor- F. N. B. 31. D.

ters that do uphold his Crown.

Therefore also he hath a prerogative in all things that are not injurious to the Subject. As he may create Corporations, Dean and Chapter, Major and Commonalty, &c. make Denisen and it remaineth good, though he be declared an usurper after (but no continuance in England can make a Denisen, though he be from his childhood, and he sworn to the King in Leets) he may reserve rent unto a stranger, grant a condition or thing in action give in fee simple, upon condition not to alien, except out of his grant, things evident, as Courts and perquisits of Court upon the grant of a Mannor, sue in what Court he will: as to have a *quare impedit* or Writ of Escheat, returnable in the King's Bench, or a *quare incumbravit* there, though the record of the Recovery be in the common place. He may alledge in his Court plea, double matter, or as many matters as he will (and the party must answer to them all, and then the King shall take issue on any one at his pleasure. He may waive his issue, and demur in Law, and contrariwise, so it be the same term, but not in another term for so he might do it infinitely. He may challenge a Juror without shew cause, or the array, because the Sheriff that made it, was cosin to the party. But no challenge shall be of a Juror against him, for he is not bound to make a demand (or tender) where a lease is made, reserving a

with a clause of re entry, hath the property of all goods that are *in nullius bonis*, shall have the Tythes of Forrests and places out of any parish, take advantage of other mens places, as to have a Writ to the Bishop, if title appear for him, though he be a stranger to the action, all the Daughters and Heirs (where the ancestor held in chief) must do homage to him: where (if they hold of a common person) the eldest only must do it where he is to have a benefit, a man may plead more pleas than once, *par darreine continuance*, as outlawry in an action of debt, &c. And many prerogatives more he hath, which in their several places shall come more properly to be considered.

But in them all it must be remembred, 12. *H.* 7. 19.
that the Kings prerogative stretcheth not to the doing of any wrong; for it groweth wholly from the reason of the common law, & is as it were a finger of that hand, though so much differing in fashion (as the head and the body can never be of one proportion) that if you set them in parallel together, you shall find it to be law almost in every case of the King, that is law in case of a subject. And yet for all that, they are not two, but one law. Only the Common Law is as the *primum mobile* which draws all the Planets in their contrary course.

In regard of the King the Queen his wife is participant of divers

prerogatives above other women.

3 E. 231. As in an act of Parliament making gifts and grants unto her, or by her (whether between the King and her, or between her and any other person) to be of the same effect, as if it were between other subjects without any benefit thereby to come to the King, need not be pleaded, but the Court and all the Realm must take knowledge of it, because she is a publick person in whom all the subjects of the Realm have interest, being the Kings wife, as they have in the King himself. Likewise she may have in her self the possession of personal things during her life, so as she may (a) 49. Ass. pl. 8. have an action in her own name alone, take lands and other possessions from the (b) 3. H. 7. 14. King by Charter (b) make leases, feoffments &c. which shall be good during her life, but afterward the King shall have them. And divers other prerogatives she hath which follow in their place.

His Subjects are the members of the Commonwealth, and are Barons and Commons.

Barons we call the Peers of the Realm. For every Duke & Earl is a Peer of the Realm, because he hath a Barony belonging unto him. Otherwise Duke and (a) 14. H. 4. 7. (b) 21. E. 481. 8. H. 6. 10. Earl are but names (a) of dignity and honour only, and (b) pareel of ones pa-

So as in every action which he bringeth, or is brought against him, he must be named Earl or Duke, as he is, else the Writ shall abate. But the name of Baron is the name of ones place & calling, which shall not be expressed in any Writ. And where addition is necessary, as by the Statute of 1 H. 5. yet he shall never be impleaded by the name of Baron, for it is not any dignity, but must be named Knight if he be one, or Esquire if he be no Knight. And touching Bishops, who enjoy the name of Lords of the Parliament, they have the same in respect of ancient Baronies annexed to their dignity.

32. H. 6. 29.

Stamp. prer. 154.

7. H. 8. Cr. 184. Hunnes case by all the Justices of England.

All the rest are Commons.

The particular persons are natural persons, or bodies politick.

The natural person is every man.

A body politick is a body in fiction of law that endureth in perpetual succession. And such is the King as he and by himself considered: and in whom the Law calleth him the Rector of a Church, for the King hath two capacities, a body natural (wherein he may inherit from any of his ancestors, purchase to him and his heirs, and retain the same, notwithstanding he be removed from his estate Royal) and a body politick, wherein he may purchase to him & his heirs Kings of England, or to him

14. H. 8. 3. Fitz.

4. El. 234.

and his Successors. So a Parson is a Corporation by the Common Law, and hath two capacities, one to take to him and his heirs, and the other to him and his Successors. And therein he is seised in fee *Ecclesiæ*.

a. E. 3. 17.
Br. Dean. & C. 2.
14. H. 8. 30.

Ibid. And if J. S. be Parson of D. and land be given to J. S. Parson, and his successors, and to J. S. Clerk, and his heirs; he is a tenant in Common with himself.

(a) F. N. B. 175. **The parson in regard of his continual attendance upon that sacred function is freed from all personal charges that may hinder him in his calling.** For such a one shall not be chosen Bayliffe, Beadle, Reeve, or other such Officer; nor be compelled to come to the (b) Sheriffs turn, to the (c) Leet, to the King or other Lords, for land annexed to their Churches. And all this by the course of the Common Law.

(b) Marl. c. 10.
(c) F. N. B. 166. c.
(d) Marl. c. 10 doth so recite it

F. N. B. 175. Br. Dism. 6. **So is every other clerk within orders.**

To the Parson belongeth of common right (as our books say) the tenth of all manner of yearly encrease, which we call Dimes or Tythes. And therefore by a lease of *Rectoria*, the Lessee shall have the Dismes and offerings of the same Church; for they are incident unto it.

15. H. 7. 8.

And if a Parson demise his glebe to a Layman, he shall pay Tythes, because they are of common right.

30. H. 8. Br. Dism. 17.

Every

Every Parson before he can be incumbent, must be presented to the Ordinarie, who is to admit him. And therefore is allowed time to inquire of the Clerks habilitie. As if he be presented to the Bishop when he is readie to ride, who willeth him to come to him within three days to be examined: if he come not then, nor within six months after, the Bishop may collate by laps; for there be many things to disable him from having the Benefice. As if he be criminous, insufficient, a Villain, have not his Letters of Order, &c. And if a meer Layman be presented, admitted, and instituted, and no sentence of deprivation or nullitie given, the Ordinary cannot collate by laps: for all that time, the Church is full to all intents, when the ordinary admitteth him to be able, that is called an admission, when he admitteth him to the charge, as to say to the Clerk *Instituo te habere curam animarum*, that is, institution.

14. *H.* 7. 21.

12 & 13. *El. Dy.* 292.

And then the Archdeacon is to put him in possession, by delivering the ring of the church door unto him, and ringing of bells, which is called an induction, and that being done, the party becometh an incumbent. Before which induction there is no possession or free hold in him of glebe, or house, or demes. So as a rent granted by a Prebendarie, after admission and institution, and before induction, with confirmation

20 *El.* 528.

of

of the Ordinary before induction, and of Dean and Chapter, the day of induction is void.

The Incumbent hath not the meer right in him of Land in the right of his Church. But the Fee-simple is in abayance, that is to say, only in the remembrance, intendment and consideration of law; Therefore he cannot discontinue, and every Act which he doth with such land may be avoided, when he ceaseth to be Incumbent, except such as are done by consent of Patron and Ordinary, which bind for ever.

Lit. 143. 6. E. 6. Dy 69.

Lit. 143. 14. H. 8. 7.

If the Church be void six months without presenting, which is called a lapse, the Ordinary himself may collate, that is, a Clark appoint of his own, and if it be void six months after his time, then the Metropolitan, and six months after his time, the King may present. All this to be understood, If the Patron present not before them. But so long as the Church is void, though it be two years after, the Patron may present, and the Ordinary or Metropolitane are bound to admit him. Quere whether it be so where the King is intitled to present by lapse.

3. E. 4. 3.

Doct. & Stud. per Br. plen. 15.

Doct. & St. ibid.

When one Church is not able to find

and the Cure, the ordinary by con- 40. E. 3. 28.
sent of the Patrons may unite it, *Fine.*
or make a consolidation of it to some 50. E. 3. 27.
other. And it seemeth that in this case, *Belnap.*
the consent of the King is not requisite, because here is no prejudice wrought to any, for if one man be Patron of both Churches, he shall have the sole presentment; if there be several Patrons, then they shall present by turn, and the King shall have the laps, as before he should. Otherwise it is upon an appropriation, for that is an amortisement, and therefore all must joyn in the making of it.

Statutes.

37. H. 8. Cap. 19. By assent of Ordinary, Incumbent, and Patron, under their Seals, an union may be made of two Churches, being not above six pound yearly value in the Kings Books, nor distant one from another above a mile; saving to the King his Tenths and First Fruits.

In corporate Towns, it must be by assent of the Corporation.

If such a poor Parish shall within a year assure by writing to the Incumbent and his Successors, eight pound yearly, the union shall be void.

Poor and besides those Corporations that were at the Common Law, there be divers others which have grown of later time, by a special

cial foundation and election, whereof some are aggregate of many persons, that is to say of a head and body; other consist in one singular person.

14 H. 8. Fen.

14. H. 8. Ibid.

These Corporations are all of them Temporal or Spiritual.

The Temporal made by the king, as Mayor & Commonalty & many more which he maketh or may make every day. Also (a) Colledges, as Master and Fellows, &c. divers towns are so incorporate before time of memory, with power to hold plea, by writ of *ex gravi querela*, or such like, and are called Boroughs, from whence come the Burgesses to the Parliament, and this maketh the difference between a Borough and a Town. So that (b) upland Towns which are not ruled and governed as a Borough is, are but Towns, though they be inclosed in Walls, as Ludlow and such like. And every (c) Borough is a Town, but not *e converso*. (d) The names of all the towns in England, and which are so incorporate, and which not, are of Record in the Exchequer.

(a) 9 El. Dy. 255. Lit. 36. 40. Ass. pl. 27. & 41.

(a) Lit. 36.

(b) 40 Ass. pl. 41.

(c) Lit. 38.

(d) 40. Ass. pl. 27.

The spiritual ones were for the most part made by the Pope, but had their power to purchase from the king. And these likewise are of two sorts, for either they are Regular or Secular.

4. H. 4. Cap. 2. 4. H. 4. Cap. 12. Coo.

Regular, which have entred into Religion, (and thereupon called Religious)

ligious } profelling to vow three things, Obedience, Voluntary Po- Littler. 66.
verty, and perpetual Chaſtity. Wherefore theſe are dead perſons in the accompt of Law, Only their head hath power to purchaſe or do ſuch other things to the uſe of the houſe. And of this ſort are Abbot and Covent, Prior and Covent &c.

Secular, are ſuch as have entred into Religion as the Biſhop and his Chapter, Maſter of an Hoſpital, and his Brethren, or confreres, gardian of a chappel, and the chaplens, &c, Alſo Archdeacons, and ſuch like. 40 E.3. 23.

Touching the Biſhop and his chapter (which make but one body) their poſſeſſions are divided: ſo as the Biſhop hath part by himſelf, and the Chapter the Reſidue. Which chapter conſiſteth of a Dean, as the chief, and Prebendaries or ſuch like, who are moſt properly termed the chapter: and of theſe alſo, their poſſeſſions for the moſt part are divided: the Dean having ſome part ſole in the right of his deanry: and the particular Prebendaries ſome other part in the right of their Prebends: the reſidue the Dean and Chapter have together. And every of them is to ſuch purpoſe incorporate by himſelf. Coo 75. 17 E.3.40. Pa. 21 E.4. 17 Aſſ. pl. 29. 18 E.3. 36. F.N.B. 195.

And theſe ſpiritual Corporations are ſometimes preſentative, ſome- 26. Aſſ.

times

kinges bailiffes perpetual or removeable, sometimes elective, and have a Common Seale according to their Corporations. To them all Personages may be appropriate, by the Patron, Ordinary, and King, and Vicars, endowed to serve the cure. Whereupon a *precipe quod reddat* lieth against the Vicar only, without naming of the person, for he alone is Tenant of the Free-hold; and may have a *juris utrum*, (or other action) against the person. All which is to be understood of an antient indowment, but not for lands whereof he is endowed by the Ordinary.

Statutes.

Magna Charta cap. 36. A Gift of Lands to a Religious house, to take it back to hold of them, is meerly void, and the Land forfeit to the Lord.

Stat. de Religiosis, cap. 1. Land given in mortmaine, under color of a rent forfeit to the Lord, the immediate Lord hath one year to enter, the next Lord half a year, and so from Lord to Lord, till it come to the King.

Westm. 2. cap. 41. The King (founder of a Religious house) may seize lands which he gave them, if they alien.

See all the Statutes of the dissolution of Monasteries, Chaunteries, &c.

CHAP.

CHAP. II.

Of Poſſeſſions.

OF the common Law there be two parts.

One that concerneth Poſſeſſions.

The other the puniſhment of offences.

Prerogative.

The King ſhall have to his own uſe, and therefore may let to farme reſerving a rent, all the poſſeſſions of a fools (a) natural, not of any other Ideot (b) during his Ideocie, but (c) not that which he hath title unto by entrie or action. And therefore upon an office (finding that the Ideots anceſtors died ſeiſed of an eſtate taile) it is ſufficient to averre the dying ſeiſed, for that only inſueth the King.

31. E. 3. Sam. def. 37.
(a) 18. E. 3. Scito fac. 10.
(b) Stam. pre. 34.
(c) 1. H. 7. 24.

Statutes.

Prerogative cap. 9 The King ſhall have the cuſtody of their lands during their life.

Prerogative

Prerogative chap. 10. And of Lunaticks during their Lunacie to their own use.

28 H.8. Dy. 12 Eliz. When one hath the possession of any thing to another's use, this use at the Common Law was accounted nothing, but as a matter in conscience and Chancery onely. Whereupon these Statutes following were made.

1. R. 3. cap. *Cesti qui use* may sue the land, &c. suffer a Recoverie of it.

7. H. 7. cap. 1. 17. The heir of *Cesti que use*, (of land holden by Knights service) shall be in ward, and pay relief.

19. H. 7. cap. 15. Execution upon judgment, fauner or recognizance, shall be had against *Cesti qui use*.

The heire of *Cesti qui use* of land in Socage, shall pay relief, heriot, &c.

27. H. 8. cap. 10. Where any be seised to the use or trust of another, *Cesti que use*, or trust, shall have the possession of such quality, manner, and condition, he had the use or trust. So when any is seised to the use or intent that another shall have a yearly rent out of the same lands, *Cesti qui use* of a rent shall be deemed in the possession thereof, of like estate as he had that use.

27. H.

27. H.8.c.16. Bargains and sales to raise an use of inheritance or freehold must be by deed indented and inrolled within six moneths, in a Court of record at Westminster, or in the County where the land lieth.

Sundry men possessing the same thing by purchase, are joyntenants or Tenants in common.

Joyntenants which possesse by the same title. As if two, three, or more, be seised of certain lands, to hold to them and their heirs, or during their own or anothers life, or disseise another to their use, or a lease be made, or a horse, or other chattel personal given unto them. *Lit. ca. of Join*

And here the survivor shall have the same in the same sort as he had his part, excepting only present interest of the thing it self granted by him that dieth. *Lit. ibid.*

As a lease for years, though the Lessee never had possession, or though it be to begin at a day to come, & the Joyntenant that made it die before the day, bindeth the survivor: for the Lessee hath a present interest.

Otherwise it is of a grant to have a lease, the grantee pay x *l.* before Midsummer, and the Joyntenant which made the grant dy before the day: for ther is no inte- *5. El. Ploy. 203 Brown.*

rest at all, but a communication only, till the mony be paid. Otherwise it is also of a rent charge granted out of the land, whereof they are Joyntenants: for that is no interest in the land it self.

Lit. ibid.

Lit. chap. of tenants in common.

Tenants in common are they which possesse by several titles.

As if two Joyntenants be, and one alieneth his part to another, the Alienee, and the other Joyntenant, are Tenants in common: for the alienee cometh in by one of the Joyntenants feoffment. So if three Joyntenants be, and one alien that which to him appertains in fee; the alienee is of this third part tenant in common, with the other two Joytenants: but they remain still Joyntenants of the other two parts. So if land be given to two men or two women and the heirs of their two bodies ingendred: the Donees have a joynt estate during the it lives; but their issues are Tenants in common of the inheritance. For every one claimeth as heir of the body of his father. And it is impossible that two men or two women should have one heir of their bodies between them begotten.

So if the land be given to a Mayor and Commonalty, and their Successors, and to I.S. for I.S. taketh in his own right, and the other in the right of the Corporation. And therefore upon a feoffment to a corporation, & another person, there must be several liveries, in respect of their several capa-

7. H. 7. 9.

parties which maketh them tenants in common.

So if lands be given to two, *Habendum* the one moyty to the one, & the other moyty to the other. In like sort if a lease for years be made to two, or two buy a horse or oxe, and one grants that which to him appertains of the term, horse or oxe to another. *Lit. ibid.*

To possessions this is general, that they may be granted.

Statutes.

3. H. 7. c. 4. All deeds of gift of goods & chattels made of trust to ones own use, shall be void.

13. El. c. 5. made perpetual.

27. El. c. 1. Every gift, grant, bargain, and conveyance of lands and chattels, or of lease, rent, common or other profits out of them, & every bond, suit, judgment, and execution since the beginning of her Majesties reign, or hereafter to be had or made, for the defrauding of any persons just action, suit, debt, account, dammage, penalty, forfeiture, herriot, mortuary or reliefs shall be void against that person, his heirs, successors, &c.

The parties or privies knowing such a fraudulent gift which shall justifie it to be done *bona fide*, or shall alien such things so from them conveyed; forfeit one years value of the lands and profits out of it, and the whole value of the goods & chattels, & the one half of such covenous bonds, & shall have

half a years prisonment: this act extendeth not to common recoveries, nor vouchees in a formdon, nor to any gift, &c. *bona fide*, and upon good consideration to any person, not knowing of any fraud.

27 El. c. 4. Every conveyance, grant, charge, lease, estate, incumbrance, and limitation of use of Lands, tenements, or hereditaments, made since the beginning of her Majesties reign, or hereafter to be made, for the defrauding of purchasors of the land it self, or any part or profit out of it, shall be void against the person so purchasing for mony, or other good consideration, and against all claiming under him, with penalty, as in the former statute.

This extendeth not to the avoiding of any grant, &c. upon good consideration & *bona fide*. If any such conveyance, &c. be made with a clause of revocation or alteration at his pleasure, by writing; and after he shall bargain, demise, sell, grant, convey, or charge the same lands, &c. for money or other good consideration (the conveyance not revoked or altered) then the conveyance, &c. shall be void against the bargainees, &c. and all claiming under them. (lawful morgages only excepted.)

Prerogative.

Every grant made by the King upon

upon surmise or suit of the party, shall be taken most beneficially for the King, and against the party. So as a pardon to the sheriffe *ex speciali gratia & mero motu* of all misprisions, offences contempts and deceits, shall discharge him of an amerciament, for returning of one *quarto exactius*, where indeed he was outlawed. But if himself sue for such a pardon, he must have express words, otherwise it will not help him. 37. H.6. 21.

His grant shall not be taken to two intents, that is, Shall not inure to any other intent than that which is precisely expressed within the grant.

As if he grant an office for life to an alien, it is nothing worth: for it cannot inure also to make him a Denisen. 9. E. 4. Den. 1.

If he grant land to *A.* in fee, which *A.* is his villein; this shall not manumise him: for the villenage is a forreign matter not expressed in the grant. 19. El. Ploy. 502.

But the King may create a Duke, and in that patent grant him Land by the same name or make a Mayor or commonalty, & by the same patent, give them Land, or grant them license to purchase: for these are two several things expressed in the Grant. Br. patents 44.

No grant of his is good, when it appeareth within the body of the grant, that the King is deceived. 18. H. 8. E. pa 104.

As if he give lands to one and his heirs

males. For this is a fee simple, and it is plain, the King meant to grant but an estate tail.

Statutes.

1 H.4.c.6. The Kings grants shall be void, if express mention be not made of the value, in the Petition of those that sue for it.

F.N.B.202. 26. H. 8. 2. (a) F. N. B. 202. c. 7 H 4,5.11. (b) 9. H.7.24. (c) 39.H.6.50.

A grant by an infant under the age of 21 years (a) one out of his right mind, whom we call *non sane* memory, or *non compos mentis*, or compelled thereunto either by (b) duress of imprisonment, or fear of some bodily hurt threatned to himself, not to his Father, Mother, Brother, &c. as loss of life, member: or though it be but of imprisonment: for imprisonment is a corporal pain, & one may be imprisoned that he may die of it. Otherwise it is of a menace to break or burn down ones house, for that is but the losse of ones goods, avoidable, that is to say may be avoided at any time be entry, action, &c. if they deliver it with their hand: as in a feoffment, and themselves make livery, or a gift of goods, and themselves deliver them

But if they deliver it not with their hand, as in a grant of a rent, advowson, &c or a feoffment by letter of Attorney, &c. it is meerly void, and nothing at all passeth

passeth. So as they may have a trespass or assise, and remain tenant to the Lord, and therefore shall be in ward, notwithstanding any such feoffment.

So of a grant made by one that hath no understanding. As if he be born dumb, deaf and blind. But one dumb may make a good grant, or born dumb & deaf. For divers may have understanding by their sight only, though dumb & blind. *Park.* 5.

Grants of an infant, in respect of doing things necessary, cannot be avoided.

As a bargain for his necessary meat, drink, and apparel: for he cannot live without them. 18. *E.* 4. 2.

Other grants of his where himself may likewise benefit. We call it *quid pro quo*, **are only voydable,** as if he let land for years, reserving a rent. 18. *E.* 4. *ibid.*

To this place belongeth exchange which is a mutual grant of equal interests, each in exchange of other *Lit.* 13.

As of land in fee simple, for other of the same estate. But to exchange an estate *pur autre vie*, for an estate for life is not good. For though both have a freehold, yet an estate during anothers life, is not so high a freehold, as an estate during his own life. *Park.* 55.

In every exchange there be two grants, *Lit.* 13.

for each granteth to other his land in exchange. And the very word it self of exchange is necessary: For if I give to a man an acre of land by deed indented, and he by the same deed give unto me another acre for the same acre, nothing passeth without livery, if the word Exchange be not in

9 E. 4. 21.

Lit. 40.

Prescription is as available as any grant, As that one and his ancestors time out of mind, have been seised of a certain yearly rent out of land, & distrained for it being behind. Or if a villein and his ancestors, as of villeins in gross, or that one, and those whose estate he hath in the Mannor of D. have had a park there time out of mind. For of such things as cannot be granted without deed or fine, the prescription must be in him and the ancestors whose heir he is: and not in himself, and those whose estate he hath: because he cannot have their estate without writing, which must be shewed to the Court. As of a villein in gross, a (a) hundred rent, &c. Otherwise it is of things appendant or regardant to a Mannor.

19 H. 6. 34.

Lit. Ibid.

3. E 3. Br. incid. 39

Lit. Ibid.

(a) 12. H. 7. 18

A possession is either upon a limitation or condition, or else absolute.

Upon a limitation which ceaseth upon the doing or not doing of something. As a lease for years, upon condi-

11 H. 7. 17.

if the Leſſee go not to Rome by ſuch a day, his Eſtate ſhall ceaſe. And therefore in this caſe the grantee of the reverſion may enter if he go not; for thereby his eſtate is determined and void. So if Lands be given to husband and wife during the coverture; or a Parſon make a leaſe to one ſo long as he is parſon; this in both caſes is an eſtate for life upon limitation. *Lit.* 90.

Upon condition, which is only determinable upon the doing or not doing of ſomething. As a leaſe for years or life, upon condition if the Leſſee go not to Rome by ſuch a day, the Leſſor and his heirs may reenter. And therefore here the grantee of the reverſion cannot reenter for the condition broken. So if a man by deed indented, infeoffe another in Fee-ſimple, or make a gift in taile, or a leaſe for life or years, reſerving to him and his heirs a yearly rent, payable at a certain time, upon condition, if the rent be behind &c. it ſhall be lawful for him and his heirs into the ſame lands or tenements to reenter &c. In theſe caſes if the rent be not paid at or before the time limitted in the condition; the feoffor or his heirs may enter in ſuch lands or tenements, and them have and hold in his firſt eſtate, and thereof quit and cleare to ouſte the feoffee, donee, or leſſee &c. And this is termed a condition in deed. So of ſuch eſtates as have by the law, a condition annexed unto them; although it be not ſpecified in the writing. As a man granteth to another by his Deed, the *Lit.* 74. & 89.

office

office of a Parkership of his park, to have and occupie the same office for term of his life; the estate which he hath in the office is upon condition in Law; that is to say, that he do well and lawfully keep the Park, and do that which to the office appertains, otherwise the grantor and his heirs may lawfully oust him, and grant it to another. And such a condition which is understood by the law to be annexed to any thing, is as strong as if the condition were put in writing.

In the same manner it is of the grant of a stewardship, Bedlesship, Bailiwick, or other offices.

Absolute, which is neither upon limitation nor condition.

Againe, Possessions are in being, which properly we term in Possession or in action.

In possession, which one doth injoy.

In action, which one ought to injoy, either in respect of a right or title.

16. El. Ploy. 553. Manwood **Right is when a wrong was done before**: as by wrongful entry upon his lands, or taking away his goods, &c.

Title, when no wrong was done.

As in a feoffment upon condition, and the feoffee breaketh the condition.

Of

Of things in action: as caule and matter of ſuit, entrie to continue ones right, or upon title; as for a condition broken, and ſuch like, **no ſtranger ſhall take advantage.** And ſtrangers are accounted (beſides the parties themſelves, which are not either privy in blood, as the heir to the feoffor: or in ſucceſſion, as the Succeſſor of Major and Commonalty, &c. or executor, adminiſtrator, &c. which repreſent the Teſtator.

Preamble of 32 H.8. cap. ſo reciteth the Common Law.

Park. 164.

Statutes.

32. H. 8. cap. 34. All grantees of reverſions may enter upon Farmers, for any forfeiture (or condition) and have like advantages againſt them, (by action only) for any other covenants, condition or agreement contained in the Indenture of their leaſe) as the Leſſors, their Heirs, or Succeſſors might. And the like for the Leſſees againſt the Grantees of the reverſions (recovery in value only except.

Therefore things in action cannot be granted but to him that hath poſſeſſion: and that by releaſe or confirmation: for a releaſe or confirmation of land to him that hath nothing in the land, is void.

1 H. 6. 4.

Releaſe is a paſſing of the grantors intereſt. The forme whereof is, *De me & hærd, quienum clamavi, &c.*

Lit. 105.

Confirma-

Lit. 119. **Confirmation is a ratifying of the grantees possession.** The form whereof is, *Confirmavi &c. de D. statum & possessionem &c.*

Furthermore, the grant of every thing in action, and of such things in possession as cannot pass by liverie of the hand, must of necessitie be by deed. For the right of the thing real or personal, cannot be given nor released by parole. No more can a reversion, rent, common in gross, or villeine in gross, be granted by parole. But a horse, oxe or such personal thing, corn and trees growing upon the ground may: and also the wardship of body or land.

6.H.7.9.

Park.13.

So a lease for life, with a remainder over, is good without deed, for the remainder passeth by liverie and seisin.

Park 25. **A Deed is a writing sealed and delivered.** For if either a parchment without Writing be delivered as ones deed, yet it is not his deed, though an Obligation be afterwards written in it: or if it be a writing but not sealed at the time of the delivery of it as his Deed, it is a scroule and not his deed. Or if I make and seale a deed, and the party take it without my delivery; I may plead it is not my deed. And

Park 27.

9 H. 6. 37.

belongeth always to him whose possession is made by it. As if I release to two disseisors, and deliver the deed to one, the other surviving shall have

31. H. 6. 1.

6 H. 7. 3.

have it. Or if the Disseisee release to the Disseisor, and he make a feoffement of the land, the feoffee shall have the release. But if a feoffment to two without deed, & the writings of the land are delivered to the one, the other shall not have them: or if having two joynt feoffees, I release to both, and deliver the Deed to one, the other though he survive, shall not have it.

But a writing read in another form to one not lettered, that is, that cannot read, is not his deed at all, though he seal and deliver it. 1. H. 7.

A deed is a deed poll or indenture. Lit.

Poll, that which is the only deed of the grantor.

Indenture, that which is the mutual deed of both: yet the deed of the grantor is the principal, and the other is but a counterpane. And therefore if the Lessor seal, and not the lessee, it is as good against him as if both had sealed. And if there happen any variance between the deeds, it shall be taken as the deed of the grantor is, and the other shall be intended only the misprision of the writer. Lit. 88. 14. El.

And barreth them from saying contrary to any thing in the Indenture. As upon a lease by Indenture sine, both parties are estopped to say that the Lessor had nothing in the land: so as if the Lessor come afterward to have the Land by purchase or discent, 15. El. pl. 434.

the

the Leſſee may enter upon him by way of conclusion, and likewise the Leſſee shall by estoppel, be driven to pay the rent.

Lit. 149. **Sometimes bare acts**, without indenture or other matter, **work an estoppel in like sort.** As if the husband discontinue the wives land, and take back to him and his wife for their lives; the wife is remitted, but the husband (by this bare taking back) is estopped to say so.

CHAP.

CHAP. III.

Of Hereditaments, where: of Estates.

A Possession is an Hereditament or Chattel.

Hereditament is a Possession which one may have an Estate in.

One born of Parents out of the Kings allegiance; such an one we call an alien. But (a) an aliens son, born in England, is no alien: Nor by the common Law, one born beyond Sea, of English Parents, in the Kings subjection. And the Statute 25. E. 3. only maketh it more cleer; is disabled to enjoy any hereditaments, he shall have no (b) real nor mixt action, nor is inheritable: but either his younger brother being a denizen, shall have it, or the (c) Lord by Escheat.

(a) 36. H. 8. Br. denison. 9. 1 R. 3. 2. Hussey.

(b) 38. H 8. Br. denison 10 & 16

(c) So Doct. & Stud. thinketh Br. denison 7.

Prerogative.

Therefore such an one purchasing (d) any, though it be but for years, it is the Kings.

(d) 14. H. 4. 20 c. Mar. Br. denisen. 25.

An Estate is particular, or an inheritance.

And is uncertain or certain.

Uncertain,

Uncertain, which is determinable at anothers pleasure, as an estate at sufferance, and at will.

At sufferance, when after lawfull occupation, he continueth possession without authority.

7.E.4.6.

As lessee for years, holding in after his term expired, and before any entry made upon him. But if he continue after entry upon him, then is he a wrong doer.

At will, when an estate is made during pleasure.

Lit. 24.
14. H. 8. 12.

Statutes.

6 H.8.c.15. If the King give land, or an office, *durante bene placito*, and after grant the same unto another: the second grant shall be void, if mention be not made therein of the first.

Certain, which is not so determinable, and is called a term, whereupon may depend a remainder or reversion: for a remainder cannot be

7.E.6.*Ploy.*83.
(a) 11 H. 4. 42

but upon a particular estate precedent: as upon a lease for years or life; upon an (a) estate to one & his heirs during the life of

4.E.6.*Ploy.*29.

I. S. for in effect it is but an estate for life. But not upon an estate to one and his heirs so long as I. S. hath heirs of his

body

body; For that is a fee simple determinable. Nor (b) at the Common Law, upon an estate to one and the heirs of his body: for it was a fee simple conditionally; (c) neither could any reversion be of it.

(b) 3 E. Pl. 2 & 247.
(c) ibid.

Remainder is a residue of the estate, at the same time appointed over: and therefore cannot be said to be *ex assignatione*, but *ex dimissione*, of the Lessor, because it passeth at the same time.

38. H. 6. 30.

Reversion is a residue of the estate not at the same time appointed over. As if a man let land for life, without saying more, the reversion of the fee simple is in the lessor. And if he afterwards grant this to another, the grantee hath a reverversion.

Lit.

Terms are forfeited by plucking the inheritance out of him that hath it. As if tenant for life (or years) of land make a feoffment in fee: for thereby the fee simple passeth, by reason of the livery.

Lit. 137. a fund. Leg. per Br. Forf. 96.

Otherwise it is, if tenant for life of a reversion or rent, grant it by his deed in fee: or if tenant (b) for life take a fine of a stranger, *sur conusance de droit*, or *sur release*; for such a fine encreaseth not his estate. But a (c) fine by tenant for life to a stranger, *sur conusance de droit come ceo qu'il ad de son done*, is a forfeiture. So if tenant for life (d) pray in aid of a stranger, or (e) in a writ of right brought a-

(b) 1. H. 7. 22.
(c) 42. H. 3. 20
(d) 9. H. 7 20.
(e) 9 H. 5. 14.

gainſt him) joyn the miſe upon the more right. And theſe are by reaſon of the eſtoppel.

Terms may be ſurrendred: that is to ſay, yielded up and drowned. For
12. H. 4. 21. a ſurrender cannot be of a fee ſimple, to **him that the next and higher eſtate.**
22. H. 6. 5. As two Joyntenants, and to the heirs of one, he that hath the freehold cannot ſurrender to the other: for both have a joynt poſſeſſion, and the ſame eſtate. But tenants
Park. 113. in common may; As the alienee of him
Park ibid. that hath the freehold in the former caſe may ſurrender to the other tenant for life, where there is a remainder for life with remainder over in fee, cannot ſurrender to
Park. ibid. him in the remainder in fee; for he hath not the next immediate eſtate. Leſſee for life cannot ſurrender to him in the remainder for years: But to him in the remainder for life he may, for that remainder (as unto him in the remainder) is an higher freehold than the others eſtate, which is unto him but *pur auter vie.*

Statutes.

Gloceſt. c. 7. Tenant in dower alienating longer than during his own life, he in the reverſion ſhall recover againſt the alienee in her life time.

A term is for years or life. The preſent eſtate for life is termed a freehold (in deed) if he be actually ſeiſed of it (in Law) before his entry, when it is caſt upon him

him by course of Law; as upon the heir by death of his ancestor; upon him in the remainder by death of the particular tenant.

A term for life is either for his own or *pur auter vie*, **that is, for anothers life, where the tenant** *pur auter vie*, **dying** before the other, whom we term *Cesti qui vie*, **he that can first hap it, shall enjoy out the term;** and is named an occupant, but if land be let to one and his heirs during anothers life, the heir shall put out the occupant. *Lit.* 167.

Inheritance followeth. Every Inheritance at the Common Law is called a fee simple: **The release whereof, or of an estate for life, is not good to one that is but tenant for years, without privity.** As if tenant for life or in fee release to the Lessee for years of his disseisor. But the release of a term for years to the lessee for years of him that doth eject him, is good enough: for there needs no privity. *9. H. 6. 44.*

And to these two estates of Inheritance and life, **warranty doth belong: which is an assurance warranting such an estate:** for the word *warrantizabimus*, only maketh a warranty, and not *defendemus*. And if a lease for years be made with warranty; this sounds not in nature of warranty, but of a covenant, because it is a chattel. And if the Lessee be vouched, yet he may have an action of Covenant. But in a warranty of a fee or free- *Lit.* 166. *26. H. 8. 3.*

3. E. 3. *for.* 44. ho'd, the party shall have no advantage, unlels he be tenant of the land.

Every exchange hath a warranty knit by law. And therefore the exchanger or his heir may vouch to warranty by an exchange without deed, and his assignee rebutte.

Lit. 1. **Inheritance is an estate descendable:** for inheritance never lineally ascend, as from the son (that purchaseth in fee simple, and dieth without issue) to the father: but alwaies discends, as to Unkle, brother, &c. **to his heirs that hath actual possession.**

Lit. 2. As if the eldest brother once enter, his sister of whole bloud shall inherit, and not his brother of the half bloud. But if he never enter, the brother of the half bloud shall inherit as heir to his father.

Lit. 3. **An heir is the next of worthiest of whole bloud:** or the half bloud is inheritable, **being also of bloud to the first purchaser.**

Lit. 2 & 3. So the bloud of the fathers side is worthier than the mothers: the elder brother worthier than the rest. Therefore these shall inherit first.

49 E. 3. 12. So, lands purchased may go to the heirs of the part both of the father and mother of the purchasor, unless it be once attached in the heir of the part of the father; for then the heir of the part of the mother shall never

never have it, because they are not of bloud to him that was last seised.

But Lands discended go only to the heir of that part from whence it discends: as if from the father who did purchase it; then it may go to the heirs of the part of the mother of the same father, but not to the heirs of the part of the sons mother. For though they be of bloud to the son that was last seised: yet they are not of bloud to the father which was the first purchasor.

He that is begotten out of marriage, is called a bastard: for if a woman great with child take a husband, the issue born (though it be within six weeks after) is no Bastard. Or if the wife clope from her husband, and continue in adultery, yet the issue born during that time (if both be within the four Seas) is intended lawfully begotten. And if one die, his wife privement inseint (that is, so with child as it is not discerned) and she take another husband, the issue born within a moneth (or such a time as it is impossible he should beget it) shall be accounted the son of her first husband, & such a bastard is of bloud to none: in Law, *(a) nullius filius.*

1. *H.* 6. 31

1 *H* 6. *ibid.*
7 H. 4. 9.

21 *E.* 3. 29.

(a) *Lit.* 41.

And therefore cannot inherit: nor (b) bring (b) a Writ of Detinue as heir, nor be a villain (c) but by his own confession in Court of Record: and the land shall (d) eschear where there is no issue but such a bastard, nor other heir.

(b) 35 *H.* 6. 9.
(c) *Lit.* 41.
(d) *E.* 2. *baſt.* 20.

(e) Lit. 94.

But (e) **marriage following after, gaineth him the right of inheritance, if after the fathers death he enter before his ponger brother,** (f) **or** sister if both be females, **born** (g) **of the same father and mother within espousals:** who is called *mulier puisne*, and the other *Bastard eigne*, **and continue** (h) **the possession all his life without interruption.** And that (i) although the *mulier puisne* be an infant: because this bindeth the right. For (k) such a bastard is a *Mulier* by the Law of Holy-Church: and therefore hath a colour to enter as heir to his father.

(f) 17. E 3. 59. bast. 32.
(g) 23. El. per Dy. in Sir Th. Gerrar. c.
(h) 2 E. 3. 16.
(i) 36. Ass pl. 2. Br. discent. 29.
(k) Lit. 94.

Lit. 53.

If the nert be women in equal distance, as daughters, sisters, aunts, &c. they shall inherit alike, and are but as one heir, called parceners or coparceners.

Lit. 160.

Where the general entrie of one is of the rest, if they list. So is not a special entry to her own use.

As if Tenant in tail have issue two doughters, and the eldest entreth into the whole, and thereof maketh a feoffment with warranty; this is a collateral Warranty, and a bar to the puisne daughter for her moyty, Which proveth, That this special entry is not the entry of both: for then it were a Warranty commencing the disseisin, and no bar. But all this is to be under-

understood where the other coparceners ſtill to have an entry for them, and not otherwiſe. And therefore in a *Partitione faciendâ* of rent, it is a good plea for the defendant if ſhe is ſole ſeiſed, without that that ſhe holds *pro indiviſo*. And the plaintiffe is driven to a *nuper obiit*. And if one enter, both cannot be vouched as heirs, for that is to their diſadvantage. But both may have an aſſiſe. 4. *H.* 7 9. 43. *E.* 3. 19.

The inheritance it ſelf that diſcendeth, ſhall be charged by the deed of the ſame (a) anceſtor. (a) 10. *E.* 4. 10.

Whether Obligation, covenant, annuity, warranty, or whatſoever elſe: but not by any bare matter (b) *en fait*, as of ones Anceſtor time out of mind have been wont to pay an annuity, *&c.* (b) 10. *E.* 4. 10.

Binding himſelf and his heirs.

But if either a man bind his heirs to pay (c) a year, or ſuch like, but not himſelf; or himſelf (d) without naming his heirs: there the heir ſhall not be charged, though he have aſſets by diſcent. And therefore (e) the heir being charged only by reaſon of aſſets, when he hath aſſets, the ſame is counted his own debt, and the action of debt lieth againſt him in the *debet & detinet*, not in the *detinet* only. And for one acre only by diſcent, the heir ſhall be chargeable to an Obligation of 1000 *l.* but no other land ſhall be put in execution, but it. So, though it be but a reverſion that diſcendeth: In (c) 31. *E.* 1. *gr.* 85. (d) 15. *El. Pl.* 457. *Br. Annuitie.* 13. 2. *H.* 4. 4. 13 (e) 15. *El. Pl.* 441. 17. *El. Dy.* 344. 40. *E.* 3. 15.

which case the Judgment shall be *Quod recuperet debitum, & damna de prædicta revertione levanda cum acciderit.* And a special Writ shall go out to extend the whole.

Statutes.

Merton c 5. *A Nomine pœnæ* shall not incur upon an heir within age.

Lit. ca. of desc. **The dying seised of the inheritance & freehold together.** Not of a freehold only, as of an estate for his own or another's life, nor of a remainder or reversion where the Free-hold is out of him.

Lit. ibid. **Whereby the land discends unto his heir.** For if it escheat, as by the death of the alienee of the Disseisor, without heir, the disseisee may enter; **taketh away the entrie of everie one.** We call it a discent that tolleth entry, whether it be of one that hath right, as in the dying seised of a disseisee (*a*) abator, (*b*) or intruder; or of one that hath but title **that may have an action:** as an Infant (*c*) whose feoffee after his full age, dieth seised: the (*d*) in the reversion, where tenant for life dieth seised; the Devisee (*c*) of land in London, if the heir enter, and die seised. For the Infant may have a *Dum fuit infra ætatem*, he in the reversion a *consimili casu*, and the devisee in that case an *ex gravi querela*. But if the disseisor of the feoffee upon condition, or an alienee in Mortmaine die seised

(*a*) *Lit. ibid.*
(*b*) 4 E. 6 pl. 47.
(*c*) *Lit.* 96.
(*d*) 21 H. 6. 17
(*e*) 9 H 6. 25. 21 H. 6. 17. 33 *Ass.* pl. 11.
47 E 3. 11. 1 E. 6. Dev. 30.

seised: or if a man devise, that I. S. shall sell his lands at London, &c. and the heir be disseised or make a feoffment, and the Disseisor or Feoffee die seised: yet the feoffor upon condition in the first case, the Lord of whom the land is holden in the second case, and I. S. in the last case may enter, notwithstanding any descent; for they have no remedy.

But claime upon the Land within a year before the death, it is called continual claime, **or if they dare** not **upon the land for fear of some** grievously hurt, **then as near the Land as they dare, saveth their entrie.** *Lit. ch. of cont. claim.*

Statutes.

32. H. 8. cap. 23. The dying seised of a disseisor by strength, and without title, tolleth not the entrie of him and his heirs, which at the time of the descent had good title of entry, unless the disseisor had peaceable possession by five years next after the disseisin.

A fee simple is a fee simple, conditional or absolute.

Conditional is a fee simple to one and the heirs of his body: for that is a fee simple at the Common Law: but the having of issue made it a more perfect fee simple than before. *40 Ed. Pl. 250.*

Which

30. E. 1. Form. 85.

Which before issue cannot be alienated, after issue had, becomes an absolute Fee-simple.

(a) 7. E 3. 36. 8 per. 4. El. 11. Pl. 240. 30. E. 1. ibid.

And may be alienated or forfeited by attainder of felonie: **But so, as if the issue faile before the alienation, the donor, or giver shall have it.**

And this by the statute of **Westm. 2.** c. 1. being restrained from all alienation (to the prejudice of the Issues) and that so as by the very words of the Statute, a reversion depends upon it; is now become, and made by the construction of that Statute, a new kind of estate, divided from a fee simple, and called an estate Taile. Which name for plainesse sake we use hereafter, calling the other only a fee simple. And the name of Inheritance we apply indifferently to them both. In which sence all common use doth take those words.

Statutes.

Westm. 2. c. 1. The Will of the giver (according to the form in the Deed of Gift manifestly expressed) shall be from henceforth observed. So that they to whom the land was given under such condition, shall have no power to alien the land so given, but that it shall remain to their issue after their death, or shall re-

vert

yert to the giver or his heirs (if iſſue faile) neither ſhall the ſecond husband of any ſuch woman from henceforth have any thing of the land ſo given, upon condition after the death of his wife (by the Law of England) nor the iſſue of the husband and wife ſhall ſucceed in the Inheritance: but immediately after the death of the husband and wife (to whom the land was given) it ſhall return to their iſſue, or to the giver or his Heirs, as aforeſaid.

34. & 35. H. 8. cap. 20. No common recovery of lands in taile, of the gift or other proviſion of the King or his Progenitors, (though it be with voucher againſt tenant in taile, the remainder or reverſion being in the King at the time of the recoverie) ſhall bind the heir in taile, or bar him of his entry. Tenant in taile ſhall take no advantage for any recompence in value againſt the vouchee or his heirs.

Either belong Hereditaments given in frank marriage; that is to ſay, freely in marriage with ones kinſwoman.

For the very word Frank marriage implieth an inheritance to the Donees, and the heirs of their two bodies begotten. *Lit. 4. & 60.*

But land cannot be given in Frank marriage with a man that is Coſen to the Donor, but always with a Woman. *H. 8. Br. Fra. 10*

Abſolute

Absolute is a Fee-simple to one and his heirs whatsoever; which descending to females (if one of them have lands of the same Ancestor by Frank-marriage) she shall have no more unless she be content to put those Lands in Hotchpot; that is, that the value thereof be allowed to the other.

Lit. 59. As if x. acres were given to her in Frank marriage, and xx. acres more (all of equal value) descend from the same Donor, the putting all together that that value may be known, shal retain her own x. and have v. acres more.

Lit. 61. But if the lands descend from the father of the Donor, or other Ancestor, and not the Donor himself; she shall have her part in that which descendeth, without putting in Hotchpot; for she is not advanced by him, but by the other.

Lit. 61. No more shall any Hotchpot be, but in lands given in Frank marriage. For if a woman have lands by any other gift, she shall have her part of that which descendeth, as if no such gift had been. And the reason of all this is, for that (if she will not put the land in Hochpot) the Law intendeth that she holds her self sufficiently advanced. *Lit. 59.* And note, that upon the Hotchpot, the lands given in frank marriage must always remain to the Donee.

To this place are to be referred

Lands

Lands given to a Corporation, which go in perpetual ſucceſſion.

And therefore Lands given to a Mayor Comminaltie, without ſaying, and to their Succeſſors, is a Fee-ſimple, and though the Grant be for their lives. For thoſe are void words. 27 H.8.15.

And a colour in an Action of Treſpaſs, cannot be given in a corporation by a leaſe for term of their lives; for being a Body Politick (which never dieth) they cannot have ſuch an eſtate. 21 E.4.66.

Here two ſpecial eſtates for life; Dower, and Tenancy by the curteſie of England, do ariſe after ones death that hath an inheritance joyned with the Free-hold.

For they (*a*) may be of a reverſion depending upon an eſtate for years, and conſequently of the rent, if any be reſerved. But (*b*) not where one hath an eſtate for life, the remainder to another in taile, the remainder to his own right heir: **whether it be a Fee ſimple, or ſuch an eſtate taile as may go to the iſſue had between the Donees; that wife to that husband (if the Donee be a woman.)** As if the lands be given to a man and the heirs that he ſhall beget of the body of his wife; the ſame wife ſhall be indowed, but not a ſecond wife. And of lands given to a woman, and the heirs of her body begotten by the husband, her husband may be tenant by curteſie, but not (*a*) 9 El.C.B. (*b*) 40 E.3.15; Lit. ch. of dow. 4. El. Pl. 239.

a

a second. So of lands given before the Statute of *west.* 2. to a man and a woman and the heirs of their two bodies; the second wife shall not be endowed, nor the second husband be tenant by courtesie, for their issue cannot inherit: But in both cases the wife of every issue (inheriting by force of that gift) shall be endowed, and the husband of every such issue may be tenant by courtesie. So of Lands given to a man and the heirs of his body, or to a woman and the heirs of her body, whatsoever wife the husband taketh may be endowed, and whatsoever husband the wife taketh may be Tenant by courtesie.

Li. chap. of dow

Lit. 7.

9. E. 4. 17.

(b) 2. H. 7. 6.

Dower is an estate whereby the woman hath the thirds in severalty, who must be nine years of age at the time of her husbands death. Detaining of Deeds concerning inheritance descended to the heir, is a bar of her dower, so long as he detaineth them: but (b) so it is not of lands purchased by the heir.

Li. chap. of dow

(c) So he must be *Lit.* 8.

(d) F N B. 150

(e) 8. E. 2. dow. 154.

(f) *Park.* 86.

(g) 44. E. 3. 43.

If the husband at the Church door, which is called an endowment *ad ostium Ecclesiæ*, or, being (c) heir apparent by the fathers or mothers consent, which is called an endowment, *ex assensu patris* or (d) *matris*, &c. for the (e) Son must make the endowment, and they assent, or (f) presently upon alliance, not (g) before espousals, or

dow

dow her of any certainty, as of the whole moity, or leſſe part &c. this ſhall bar her of the thirds if ſhe agree to it. But ſo ſhall not an endowment, *ad oſtium cameræ*, nor, *ex aſſenſu fratris*, or *conſanguinei*: Therefore it is at her election after her husbands death to hold her to this endowment, or to take her Dower at the Common Law. And in ſuch endowments the wife may enter after her husbands death, without any bodies aſſignment, (becauſe the certainty of the land which ſhe ſhall have appeareth) which in dower at the Common Law ſhe cannot.

F. N. B. 150.
F. N. B. 150.
21. H. 6. 25.
Littlet. 8.

Statutes.

Magn. Chart. cap. 7. The wife, after the death of her husband, ſhall abide in his chiefe meſſuage forty days, within which time, her dower ſhall be aſſigned her. If the chief meſſuage be a Caſtle, then ſhe ſhall have a competent houſe provided her till her dower be aſſigned.

Weſt. 2. cap. 34. A woman that leaveth her husband, and abideth with an Adulterer, ſhal not have dower, unleſs the husband (voluntarily, and without coertion of the Church) reconcile himſelf, and ſuffer her to inhabite with him.

11 H. 7. cap. 20. If a woman that hath an eſtate in dower for life, or in taile jointly with her husband, or only to her ſelf,

ſelf, or to her uſe in any lands &c. of the inheritance or purchaſe of her husband, or given to the husband and wife by the husbands anceſtors; or any ſeiſed to the uſe of the husband or his Anceſtors, do ſole (or with an after taken husband) diſcontinue or ſuffer a recovery by covin, it ſhal be void. And he to whom the land ought to belong after the death of the ſaid woman may enter (as the woman had been dead) without any diſcontinuance or recovery: Provided, that ſhe may enter after the husbands death. But if the woman were ſole, the recovery or diſcontinuance barreth her for ever.

This act extends not to any recovery or diſcontinuance with the heir next inheritable to the woman, or by his conſent of Record inrolled.

27. H. 8. c. 20. Where an eſtate is made in poſſeſſion or uſe to husband and wife, & his heirs, or the heirs of their two bodies, or to them for their lives, or for the wives life for her Joynture, ſhe ſhall not have any dower: upon a lawful eviction of that joynture, ſhe ſhall be endowed according to the rate of land of her husbands whereof ſhe was dowable.

Such a Joynture being made after mariage, the wife (after her husbands death) may refuſe it, and betake her to her dower, unleſs the Joynture be made by Act of Parliament.

Tenancy by the curteſie of Eng-

land

land is an estate, whereby of an actual possession, the husband that had issue by her born alive (whether the issue be male or female, heard or seen, and whether it afterwards die or live, or if (a) the issue be born alive, it is sufficient, though it be not heard to cry (in as much as he may be born dumb) shall have the whole. *Lit. 7.* (a. 28 H. 8. Dy 25 Fitz.

But no tenancy by curtesie shall be of a possession in Law. As where lands discend to the wife, and she dieth before the entry, by her, or her husband, or any of them. Nor of a thing in suspence: As where tenant in fee of the Land, marrieth a woman that is seised of the seigniory in fee, the husband can never be tenant by the curtesie of the Seigniory: for by the intermarriage it is suspended. And it is called tenancy by the curtesie of England, because no other Realm useth it. *Park. 90. & 89.* *Lit. 7.*

CHAP. IV.

Of Land.

Hereditaments, or tenements or bare hereditaments.

A Tenement is a possession holden, the fee simple whereof, when he that hath it dieth without heir, cometh to the Lord.

Littlet. 2.

39. Ass pl. 7. Which is called an escheate. As if Land discend from the father, and he die without an heir of the part of the father. Or a Bastard purchase land, and die without issue.

Of this sort are lands and advowsons.

Land is a tenement or manuel occupation.

21. H. 7. 39. For if the tenant of twenty acres of land before *quia emptores terrarum*, make a feoffment of one of the acres, to hold of him by vj. d. and dieth without heir; the Lord shall have a Writ of Escheate, suppoſing that he held of him xix acres, and vj. d. rent, yet indeed he held not the rent but the land: And in his Count he shall declare all the special matter. So in a Writ of

Waſt

Ward of the heir of the meſne; the Writ ſhal ſuppoſe the rent to be holden, and declare ſpecially. Or he may have a general Writ of the land, or a ſpecial Writ, becauſe the Meſne held the land *unde redditus ille provenit*. All which proveth, that indeed not the ſeigniory, but the land is holden. Therefore of land rent, &c. the pleading is, he was ſeiſed of his demeſne as of fee. But an advowſon lieth not in manuel occupation therefore the pleading there, is, He was ſeiſed in fee, without ſaying in demeſne. F. N. B. 139. C. Lit. 1.

Under the name of land are comprehended not only gardens, medows, paſtures, woods, rivers, &c. but alſo meſſuages, tofts, mills, Caſtles, and ſuch like.

For in a *Præcipe quod reddat* of a meſſuage, the warrant of Attorny, is *quod talis Pſo ſua (i) poſuit loco ſuo I. S. in placito terræ.*

Churches and Church-yards belong to the Incumbent. 11. H. 4. 12.

For things annexed to the Church or Glebe: as trees or graſſe growing there, are the Parſons, and he ſhall have an action for them, and for entry into the Church-yard or Glebe. And if he be ejected out of his Church, and another take the profits, he may have an aſſiſe of the Rectory, Church-yard and Glebe; for it is his Freehold. 38. H. 6. 20.

Prescription here is of no force.

Doct. Stud. 1 6. For it maketh no right in land, but in rent or profit out of land.

Prerogative.

50 Ass. pl. 1. 18. El. Pl. 498. All land is holden of the King immediatly, or by means: himself having not any higher upon earth, of whom to hold.

8 E 3. cap. 12. 8 El. Pl. 314. Escheats of all cities appertain unto the King. All mines of gold & silver, or wherein the gold and silver is of the greater value, are the Kings.

14 H. 3. stat. Hib. doth so recite it. Among coparceners the eldest upon partition shall have the chief house.

Lit. 137. Seisin delivered of land, we call it livery of seisin; and the making of the estate we call feoffment, alwaies passeth a Free-hold, though he be but tenant for years, at will, or sufferance, that maketh it.

4 E. 6. pl. 25. Lit. 12. (a) Lit. 109. (b) Lit. 121. And otherwise a freehold of land cannot pass save by release, (a) and confirmation, (b) where they were by way of enlarging an estate. As a lease for years, and afterwards release or confirm to the Lessee, to have and to hold to him for life, or to him and the heirs of his body, or to him and to his heirs &c. for a feoffment with livery made by one to his Tenant (c) at will, or (d) for years,

(c) 22 H. 6. 43. (d) 22 E. 4. 38.

years, is void, except it be by deed, and then it shall inure by way of confirmation. (e) Lit. 13. (f) Br. dow. 7.

Exchanges, (e) indowments, (f) and surrenders. (g) (g) 44 Ass. pl. 3.

Livery within the view, so we call an estate made within view of the land, be it by delivery of a deed of feoffment within the view, or otherwise, is a good livery or seisin, if the other enter in the feoffors life time: else the land discendeth to the heir of the feoffor, and the feoffment shall never effect. 38. E. 3. 11. 2. H. 8. Br. feoff. 70.

CHAP. V.

Of Advowsons.

ADvowson is the interest of presenting to a Church. 15 H. 7. 8.

And this also lieth in tenure. For a common person may give it to hold of him. And the Writ of Right of Advowson is, *Quod clamat tenere de te.*

CHAP. VI.

Of Seignories.

Hitherto of Tenements.

Ware Hereditaments are those which are not holden, and concern the land or persons.

Those that concern the land, are extinguished or gone for ever, when he that hath them hath also the possession of the land that they concern, in as high a continuing an estate as he hath the hereditaments.

Otherwise they are but suspended or gone for the time.

34 Ass. pl. 15. As if the Lord purchase the tenancy in fee, and though it be to him and another, and that other survive. For his estate is as high in the tenancy as it was in the seignory.

But if one that hath a rent charge in fee, grant it for life to the tenant in fee of the land, or in fee to the tenant for life, of the land, that is by a suspension of the rent. And therefore (a) in the first case it may be with a remainder over, & (b) in the second the

(a) Abridgm. of Assises.
(b) Park.

the tenant may grant it in his life, and his heir shall have it after his death. For the estate was not so high in the one as in the other.

So if a man that hath a rent charge in fee going out of land, entermarry with a woman Tenant in fee of the land: or if the Tenant infeoffe his Lord upon condition. For there in the first case the husband may grant this rent, notwithstanding the entermarriage; and in the second case, if the tenant enter for the condition broken, the seigniory is revived. For the estates are alike perdurable. 5. E. 3. 16. Park. 19.

These are leviable by distresse, or such as cannot be distreined for.

Distresse is taking of chattels. As (a) a Cart full of Corn, a fold (b) of sheep, &c. a (c) mill-stone, &c. if it be not part of the Mill, though it be fixed to a piece of timber with nails, windows, and doors, when they are remov'd off from the hooks. But a Mil-stone, though it be lifted up to be picked and beaten: yet so long as it lieth upon the other stone, remaineth parcel of the mill, and cannot be distreined. No more can windows and doors hanging upon the hooks, though they be removeable, 9. H. 6. 9. **found upon the same land,** but in 13. E. 4. 6. other land not holden of him, he cannot distrein for his seigniory, except it be by the Tenants grant, **for satisfaction of arrerages** for dismes let reserving a rent, cannot be distreined for the rent, not when

(a) 2 H 4. 15.
(b) 20. E. 4. 3.
(c) 14. H. 8. 25.

11 H. 4. 49. they are severed from the ninth part, in so much as there is no distresse but upon land in demesne, neither could a distresse be taken upon a Pistary, but that it containeth land and demesnes.

3 Mar. Pl. 154.

Prerogative.

9 H. 6. 9.
13 E. 4. 6.

The King may distrein in another land of the same mans for his seigniory or rent charge, but so shall not the grantee. 9. H. 6. 9. is, That a common person cannot distrein for his seigniory, but in the land holden of him, except it be by his Tenants grant. But the King may in any place.

13 E. 4, 6. is, That the King for his services or for a rent charge, may distrein in all his Tenants lands. But so shall not the Kings Grantee.

Statutes.

Marlb. c. 15. Distresses shall not be taken in the High way or Common street; but by the King or his Officers having special authority.

Artic. Cler. c. 9. Nor in the ancient fees of Churches.

The distresse being put in pound overt, or open pound; that is, **some place where the owner may lawfully come at them, as if they be things that have life, to give them**

9 E. 4. 2.

meat,

meat, &c. he that distreineth shall not be charged, what hurt soever they receive, for quick Chattel must be put in pound overt, that the owner may give them sustenance: dead, need not. But if they be marred in his default that distreineth, he shall answer for them.

Statutes.

Parl. 5.4. None shall lead distresse out of the County where they were taken. The neighbor that doth it to his neighbor, shall be fined. The Lord that doth it to his Tenant shall be amerced.

1. & 2. Ph. & Mar. c. 12. No distresse of Cattel shall be driven out of that hundred, rape, wapentake, or lath, where it was taken: except to a pound overt within the Shire, not above three miles from the place where it was taken. No distresse taken at one time shall be impounded at several places, whereby the owners shall be constrained to sue several replevies, the pain of both these v *l.* and treble damages. No person shall take above iiij d. for the poundage for any whole distress impounded: & where lesse hath been used, there to take lesse, upon pain of v *l.* and losse of the money he hath taken above iiij d. any prescription notwithstanding.

Ware hereditaments that may be distrained for are a Seigniory, & Rentcharge. Seigni-

Seigniories are services whereby lands are holden.

Services are common to all certain Estates, or proper to inheritances.

Common, as fealtie, and rent service, whereof fealtie is incident to every such estate. Lit. 29. For Lessee for life or years, shall do fealty of common right. But tenant at will shall not, because he hath no sure estate. Lit. 23. And therefore the seigniory or tenancie being altered (whether by discent or grant) it must be done anew.

All other (both common and proper) grow by reservation.

Fealtie is an oath to be faithful to his Lord for the tenements. Lit. 19.

Rent service is a rent to be paid to the Lord at certain set times.

And to this place we may refer all services that lie in defeance. Park. 127. As to be ones Butler, to cover his house, to scour his ditches, &c. But a reservation of things in prender or user, as to have Common for four beeves, or four Cart loads of wood, maketh no tenure.

Of which kind, two among the rest are specially to be considered; that is to say, frank almoigne and divine service.

Frank almoign is, when a man of the Church holdeth freely in almes:

ſtates: For if an Abbot, tenant in frank almoigne, alien to a ſecular man, he ſhall do fealty to the Lord, becauſe a ſecular man cannot hold in frank almoign. And the Tenant in this caſe holdeth of the donor and is within his fee. For the Kings grantee of ſtraids *infra feoda ſua* ſhall have them in lands holden of him in frank almoin. And the tenant ſhall have againſt him a Writ of meſne, or *Ne injuſte vexes*. And if the abbot tenant in frank almoin, and all the monks die, the Lord ſhall have the eſcheat, for the which he is bound to ſay prayers, and theſe prayers are the ſervices. But becauſe the prayers are not limited in certain, he neither ſhall do fealty, nor is ſubject to diſtreſſe or *Ceſſavit*, if they be not done. *Lit.* 31. 7. E. 4. 10.

The Lord muſt warrant ſuch a tenant againſt himſelf and his heirs, and ſave him harmleſs of all manner of ſervices, againſt the Lords above, which we call acquitaile. 7. E. 2. *gar.* 79. *Lit.* 32. *for aqu.*

Divine ſervice is a ſpiritual kind of ſervice limited in certain, As to diſtribute in almes to an hundred poor men, an hundred pence, &c. *Lit.* 30.

Theſe are the ſervices whereby every certain eſtate may be holden. There follow thoſe proper to Inheritances.

The grantee whereof ſhall hold of the grantor by ſuch ſervices as he holdeth

Park. 134. holdeth over, if other services be not reserved. As if there be Lord, and tenant by Knights service, and the tenant before the Statute of *quia emptores terrarum* infeoffe a stranger of the tenancy, without any thing reserving: Now the feoffee and his heirs shall hold of the feoffer and his heirs by Knights service.

Or the grantor may appoint him to hold of the next Lord. As if before the Statute of *quia emptores terrarum*, there were Lord mesne and tenant, and the tenant infeoffe a stranger to hold of the mesne; this is good, and the feoffee shall hold of the mesne by the same service that his feoffor held, and the feoffee cannot reserve new services, for to them the mesne is a stranger. But if the feoffment were to hold of the Lord paramount, that were void. So if the feoffment were to hold of any other stranger.

Statutes.

18 E. 1. *Quia emptores terrarum.* In all feoffments to one and his heirs, the feoffee shall hold his land of the chief Lord of the fees by the same services that the feoffor held before. If the feoffment be made of parcel he shall hold of the chief Lord *pro particula*, according to the quantity of the Land, and the feoffor set free for the part.

A mesne, that is, he that holdeth over if it be by no greater services than the te-

nant

tant holdeth of him, we call it overly of services, whether they be the same as each of other by xx s. or less as he by xx s. and the tenant of him by xxx s. **must acquit the tenant of all manner of services against the lords paramount.**

But Donees in frank-marriage cannot hold but by fealty. And therefore a gift in frank-marriage, rendring a rent, the reservation is void, for it is contrary to the nature of a frank-marriage, which is, to render nothing till the fourth degree be past. Some think the reservation good, and the frank-marriage thereby destroyed. But all agree, that the frank-marriage and the reservation cannot stand together. **And that of the donor till the fourth degree be past.** And therefore a gift in frank-marriage, the remainder in tail to a stranger, is a good frank-marriage, for the reversion of the fee is in the donor, which maketh a tenure between them: otherwise it is, if the remainder were in fee. **who must also acquit them of all manner of services.** And therefore the Donees in frank-marriage may have a Writ of Mesne.

4 H. 6. 22.

Old ten. Fol. 7.

17 E. 9.

Lit. 4.

12. H. 4. 9.

Prerogative.

One that holdeth of the King, as of his person, which is a tenure in chief. But if a Prince of Wales, before Statute of *Quia emptores terrarum*, make a feoffment to hold of his person, and after

30 H. 8. Dy. 44.

ser is made King, this is no tenure in chief for a tenure in chief is the highest & most honourable service in Law, because it is the chief head of the body of the Realm, and therefore must be immediate unto the King, and take his original creation from the King himself, not from a subject. So to hold of the King, as of his honour of Gloucester is no tenure in chief; for it is not of the Kings person, alienating the freehold without license, forfeiteth the Land.

(a) 14. E. 3. impedit. 54

Statutes.

Mag. Ch. c. 31. By a common Knights fee, or a Barony, &c. to the King, the tenant shall not hold in chief.

1 E. 6. c. 4. No more when a Seigniory cometh to the King by treason or dissolution.

1 E. 3. c. 12. The King from henceforth shall not hold as forfeit such lands if they be alienated, but shall have a fine for them in the Chancery.

Services proper to estates of inheritances, are homage and suit of Court. For tenant for life shall not do nor take homage, but only tenant in fee simple or in tail, in his own or another right. As the husband for lands that he holdeth in the right of his wife, if he have an issue by her, shall do homage in her life time, but not after her death, if he holds himself

Lit. 10.

himself in as tenant by curtesie: Neither can a man at this day make a manor notwithstanding that he give land to many severally in tail, to hold of him by services and suit of Court, for he may make a tenure but not a Court, for a Court cannot be but by continuance time out of mind. 23. H. 8. B. comprise 31.

Homage is an oath of fidelity, acknowledging himself to be the Lords man: wherein the tenant must be ungirt, uncovered, kneel upon both knees, and hold both his hands together between the Lords hands sitting before him. This is to be done only to the Lord himself, but the Lords Steward or Bayliffe may take fealty for him, and but once during the tenants life. So as having done it once, he neither shall do it again to the heir of the Lord, or grantee of the services, nor to the same Lord, if other lands do afterwards discend to the Tenant that are holden by homage of him. And though it be in the Kings case. Lit. 18. Lit. 9. Lit. ibid. (a) Lit. 33. b. 24. H. 8. Br. Br. fealty 8.

Prerogative.

The Kings Chamberlain shall take homage for him. F.N.B. 256. e.

Statutes.

33 H. 8. c. 22. A fee set down for retaining of homage in the Exchequer or other Courts. 14 H. 3. St. Hib. so reciteth it.

When an inheritance discendeth

eth to coparceners, the eldest only shall do homage.

Prerogative.

But if they hold of the King, all of them must do it.

When one & his ancestors, whose heir he is, have held by homage of a Lord and his ancestors, whose heir the Lord is, time out of mind, and the Lord hath received homage, for the alienee of tenant by homage ancestrel, holdeth not by homage ancestrell, nor shall have warranty from the Lord, because the continuance of the tenancy in the tenant is discontinued. No more shall the tenant himself by homage ancestrel, if he alien in fee, and afterwards take it back again. And if the Lord by homage ancestrel grant his seigniory, the tenant need not attorn, unless the grantee will warrant the land to the tenant and his heirs, for otherwise his warranty were lost, because by attornment the homage ancestrel is destroyed. **that bindeth him to warrant and acquit the tenant.** And the tenant may have a Writ of Mesne. But if the Lord have not received homage, he is not bound. Therefore such an one may compel the Lord to receive his homage by a Writ *de homagio capiendo*.

Lit. 33.

18 H. 6. 2.

45 E. 3. 23.
11 H. 4. 52.
Lit. 33.

45 E. 3. 23.

Suit of court is a service by coming to the Lords Court. For suit of Court one shall be distreined and not amerced, which proveth it to be suit service.

Old ten. Fol. ult.

But

But for a ſuit real (which is to come to the Leet) he ſhall be amerced and not diſtreined: yet a tenure to come to a leet or hundred, and to do there ſome ſpecial ſervice, as to be a Cryer, &c. is a good ſervice, but not ſute ſervice. And every ſute ſervice is intended to a Court Baron. 12 H. 7. 17. 11 E. 4. 15.

Land in the Lords hands (whereof ſeveral men hold by ſuit of Court) is termed a Mannor: the land conſidered apart from the ſervice, is termed demeſnes.

Statutes.

Warl. c. 9. None ſhall be diſtreined to do ſuit of Court unleſſe he be ſpecially bound to it by his Charter of feoffment: except ſuch as they or their anceſtors were wont to do it, forty years before the making of this Statute, whether they were infeoffed by deed or without.

The eldeſt Coparcener ſhall only do ſuit of Court, and the other parceners contribute. And where there be many feoffees, the Lord ſhall have but one ſuit, and the feoffees contribute.

The particular kinds of ſervices (whereby lands of inheritance are diſtinguiſhed) be ſocage & knights ſervice: both draw unto them certain commodities to the Lord, partly in the tenants life, and partly after his death.

That in his life is a reſonable aid

or portion towards the making of the Lords eldeſt Son a Knight, and towards the marrying of his eldeſt daughter. It is called *ayd pur faire fits Chivalier*, and *pur file marier*. And if the Lord confirm to his tenant to hold by fealty and certain rent, releaſing all other ſervices and demands; yet he ſhall have reaſonable aid, for it is incident to the ſervices, and not releaſed by thoſe words.

40. E. 3. 22.

Statutes.

Weſtm. 1. c. 35. Reaſonable aid ſhall be xx ſhillings for a whole Knights fee, and as much for xx l. land in Socage: ſo after the rate of more, more, and of leſs, leſſe. The time of levying it to make his ſon Knight, muſt be when he is fifteen years old; to marry his daughter when ſhe is ſeven. If the father after the aid levied die before he marry his daughter; the fathers Executors ſhall be charged to the daughter of ſo much as the father received or his heir, if his goods be not ſufficient.

25 E. 3. c. 11. Reaſonable aid to make the Kings eldeſt ſon a Knight, or to marry his eldeſt daughter, ſhall be levied of all Land holden of the King, without error, according to the rate in the former ſtatute.

The other after his death ſhall have Wardſhip and relief.

Fitz. gard. 67. Wardſhip is the cuſtody of the bo-

by

be and land at the heir within age, which shall be till xxiij of a woman.

Reliefe is a portion to be paid by the heir to the Lord.

Socage is a tenure to be done out of war: As if one hold by fealty only, or by fealty and certain rent, or by homage and fealty, or by homage, fealty, and rent for all manner of services, or by escuage certain, that is to say, by paying a certain sum of money, as half a Mark, &c. and no more or lesse (howsoever the Parliament assesse it) towards finding of a man for the war when the King makes a voyage royal towards the Scots, &c. or by paying a certain rent for Castle-ward. &c. Li. chap. of Soca.

Where the next of kin whom the inheritance cannot discend, As if land discended of the part of the father, then the mother, or the next cosin of the mothers side: if of the part of the mother, then the father, or next friend of the fathers side shall have the heirs wardship till xxiij. to the Heirs own use. And therefore must render an account to the heir at his full age, of the issues and profits of his lands, & of the value of his marriage, if he marry him within 14 years of age. And if he dy before the heirs age of fourteen, yet his executor shall not have the wardship; no more shall the husband after the death of his wife, Gardian in socage. But if the wife be Gardian in socage, and the husband (or they both by indenture)

ture) let the land, yet the wife after her husbands death may enter: for in as much as she hath it only in the right, and to the use and benefit of the Infant; the ordering & disposing of this land shall not be taken from her by any act of her husband.

Statutes.

Marl. c. 17. Gardian in Socage may not do waste, exile nor destruction, nor give nor sell the marriage but to the commodity of the heir.

Littl. ibid. **Here for relief the Lord shall have presently so much as one years rent amounts unto.** As if the tenant hold of the Lord by Fealty, and x s. rent payable at certain terms of the year (as half yearly or quarterly) then the tenant shall pay unto the Lord x s. for relief over and above the x s. that he shall pay for the rent, and that by and by, without tarrying till the day of payment of his rent, and of what age soever that the heir be.

Prerogative.

33 H. 8. Br. Livery & ouster lemain 60. Stam. prer. c. 35. H. 6. 52. F. N. B. 250. **Tenure by Socage in chief giveth the King primer seisin, or the value of that land by a year, if the heir be of the age of xiiij at his ancestors death:** therefore the heir shall be driven to sue his livery, but not if he be under xiiij, at the death of his ancestor. And if being under xiiij he sue his livery, it shall be una-

GHM

non exhibitus: but not if he ſue it at xiv. xiv.
If one hold of the Kings perſon to do ſomthing concerning war, but not to be performed by the perſon of a man, as to give him yearly a bow, ſword, dagger, &c. it is called petty Sergeanty, and is but a tenure in Socage.

Knights ſervice is a ſervice touching war to be done by the body of a man. As if one hold by Eſcuage uncertain, that is to ſay, by being himſelf or ſome other for him with the King 40 days well and conveniently arrayed for the war (if he hold by a whole Knights fee, or 20 daies if he hold by the moity of a Knights fee, and ſo by proportion) whenſoever the King maketh a voyage royal into Scotland &c. elſe to pay ſo much money as ſhall be aſſeſſed by Parliament. Or if a man hold of any Lord to keep his Caſtle in time of war (which is called Caſtle-gard) or to blow a Horn in time of invaſion by enemies, which is called Cornage. *Lit. chap of Knight-ſervice*

F. N. B. 83 c.

7 E. 4. 28.

To all knights ſervice homage is incident, but not unto Socage. Here the Lordſhip is the (a) Lords (b) to his own uſe. Therefore his executors ſhall have the ward during the heirs nonage (c) **and that till xxi of an heir male.** And therefore if the Lord marry a male that is his ward, before 21. yet he ſhall be in ward for the land till that age.

(a) *Lit. 22.*
(b) *Lit. 72.*
(c) *Br. gar. 111*

Statutes.

Mag. Ch. c. 3. The Lord ſhall take ho-

mage of the heir before he have wardſhip.

Marl. c. 6. If one infeoffe his heirs within age to cauſe the Lord to loſe his wardſhip, and die yet the Lord ſhall have the wardſhip.

So when a fraudulent feoffment is made by a tenant, upon condition to revere, after certain years, to him or his heirs, if the feoffees pay not a certain ſum, to the value or more than the value of the Land. In this caſe the Lord ſhall have a Writ, *de cuſtodia reddenda*; and if (being able to aver this matter) he recover, yet the feoffees ſhall have the Land again, when the heirs come to age. The Lord not being able to aver this, ſhall render the feoffees their coſts and damages.

32 H. 8. c. 1. Two Joyntenants or more, and the heirs of one holding of the King, and he that fee dieth, the King ſhall preſently have the wardſhip and marriage of the body of his heir, if he be within age. Saving to every woman her dower of two parts of thoſe lands, divided from the third part, as aboveſaid, and not otherwiſe, and ſaving to the King during the Wards minority, the reverſion of ſuch Joyntenants, and Tenants in dower.

Mag. Ch. C. 3. The heir being made knight within age, yet the land ſhall remain in the Lords cuſtody to the end of the term.

The wife ſhall be barred of her dower,

Dower, both dower (a) at the Common law, and dower (b) *ex assensu patris*, or (c) *ad ostium ecclesiæ*, **so long as she detaineth the heir from him.** But in pleading she must shew the heirs name, and whether it be male or female.

(a) 2. H. 7. 6.
(b) 4. H. 3. *dow.* 174.
(c) 1. H. 3. *dower* 187. 2. H. 7. 6.

Wardship of the body giveth the Wards marriage to the Lord, as a thing of meer right, pertaining to him. And that whether he will be married by the Lord or not. 2. H. 7. 9.

Statutes.

Merton C. 7. The Lord marrying the heir within fourteen years of age, in such sort as he be disparaged, shall lose the custody and whole commodity of the wardship, if the Wards friends complain of it.

The heir full of age shall satisfie his lord for the value of his marriage, as much as any man would give, before he receive his Land.

Merton. C. 6. An heir, after fourteen years of age, marrying himself without the Lords license (who tendreth to him a covenable marriage) the Lord shall hold the land, after the heirs full age of one and twenty years, so long till he may receive the double value of the marriage.

Westm. 1. C. 22. The Lord may hold the land of heirs females, two years after their age of 14. within which two years, if

he marry them not, they shall go quit, without giving any thing for the Wardship or marriage. And if they will not accept a covenable marriage tendred by the lord, he shal hold the land till xxi & over, till he have taken the value of the marriage.

4 & 5 Ph. & M. C. 18. A woman above 12, & under 16, agreeing to a person that contracteth matrimony with her contrary to the form of the stat. (which she fol.) the next of her kin to whom the Inheritance should come after her death, shall from the time of such assent, have all the lands, &c. which he had at the time in possession, reversion, or remainder during her life.

If one hold sundry lands of divers Lords, the wardship of body goeth to the Lord of that land which the Tenant held first. VVho is called a Lord by priority, and the other by posteriority. And it is the feoffment of the land which maketh the priority: for the pleading is, That he holdeth the land of him *per antiquum feoffamentum*, then he holdeth the other land of the other. Therefore if the Tenant of lands holden by priority, maketh a feoffment in fee & take an estate back again in fee, this land shall be holden by posteriority. But if the Lord by priority grant his seigniory in fee, yet the tenure shall be of the grantee by priority. So though

F. N. B. 142.

though the grantor take an estate of the Seigniory back again in fee.

Prerogative.

The King shall have the wardship of body, though the tenure of him be by posteriority. But his Grantee of the Seigniory shall not. 12. E. 3. pr. 3.

The eldest child (a) whether Son or daughter, being heir apparent to the father, shall not be in ward for his body during his fathers life. But if one having a son, take a wife seised of Knights service, and hath another Son by her, and after the wife dieth; this second son shall be in ward during his Fathers life, unless the husband be intituled to be tenant by curtesie. (a) 33 H. 6. 55. F. N. B. 143. l.

Prerogative.

Tenure by Knights service in chief giveth to the King the wardship of all other lands also, And further, (a) primer seisin, or the value of them all by (b) half a year (if the heir were in ward) by a whole year (if he were not) (c) which primer seisin must be paid, and relief also. *Stamf. prer. 1. The stat. of prer. c. 1. 16. in this point but a declaration of the common Law.* (a) 33 H. 8. Br. *livery ouster le main 66.* (b) *Stam. prer* 14. (c) Br. *relief* 12.

Relief for land holden by Knights service amounteth to an C. sh. for a whole Knights fee, to a C. marks for a Baronie, and to an C. pounds for an Earledom.

Mag.

Mag. Chart. cap. 12. calleth this old Relief, and according to the old custom of the fees, which proveth that Statute to be but an affirmance of the Common Law.

Old Nat. Brev. per Br. relief. 13.

If the heir be within age at the Tenants death, no relief shall be paid to the lords that are to have the Wardship. And if one hold of several common persons by Knights service, the Lords by posterioritie shall have no relief

14. E. 3. 24.

because they are to have the Wardship of the Land holden of them, though the Lord by Priority only have the wardship of the body. But if in that case there be any Land holden by Knights service in chief, the heir at his full age shall pay relief to the other Lords. For there the King hath the Wardship of all his lands.

Prerogative.

Grand Sergeantie, that is to say,

33. H. 8. Dy. 44.

Tenure of the Kings person, for every grand Serjeanty is a tenure in chief, being of none but of the King. **to do unto him a more special service whatsoever by the person of a man,** as

Lit. 34.

to bear his banner or lance, to lead his horse, to carry the sword before him at his coronation, to be his sewer, butler, or carver, to be one of the Chamberlains of the receits of the Exchequer, or to find a man to wait for him whersoever within the four Seas, for if he can find none to do the

11. H. 4 72. Lit. 36.

service for him, he must do it himself. **If a special knights service in chief,**

where

where the king instead of reliefe (d) Lit. 35.
shall have the value of the Land by 11. H. 4. 72.
a year.

CHAP. VII.

Of Rent-Charge. Lit. 48.

RENT charge is a rent with libertie to distraine. As when a man seised of land granteth by a Deed Polle, or by Indenture, a yearly rent going out of the same Land to another in fee or fee taile, or for term of life &c. with clause of distresse, or maketh a feoffment in fee by Indenture, reserving to himself a certain yearly rent, with clause of distresse.

CHAP. VIII.

Of Rent Secke.

Here hereditaments concerning Land (for which no distresse can be taken) are a rent secke and common.

A Rent Secke is a rent without Lit. 48.
liberty to distreyne. As where a rent is so granted or reserved as before, without clause of distresse.

When a Rent is granted for equality of partition among Coparceners,

teners, as upō two houſes, one worth xx. s. a year, the other worth x. s. allotted one to the one coparcener, the other to the other, and that coparcener that hath the houſe worth xx. s. a year, to pay v. s. yearly to the other, **this rent may be diſtrained for though no ſuch liuery be granted.**

The grant of a ſeigniory, rent charge, and rent ſerke, as alſo of the remainder or reuerſion of any of theſe, or of the land it ſelf, is nothing worth without Attornement, that is to ſay **the agreement of the tenant that preſently muſt be charged.** As Lord, Meſne, and tenant; the Lord grants his ſeigniory, the Meſne muſt atturne, and not the Tenant preſent: for the Meſne is Tenant to the Lord, Lord and Tenant, the Tenant letteth the Land for life, or giveth in taile, ſaving the reuerſion to himſelf: now if the Lord grant his ſeigniorie, he in the reuerſion muſt return to the grantee, and not the tenant for life or in taile; for he in the reuerſion is Tenant to the Lord, and not the other. But if the Tenant had let his land to one for life, the remainder in fee, there upon a grant of the ſeigniory, the Tenant for life muſt atturne, for he is Tenant to the Lord. So is not he in the remainder whilſt Tenant for term of life liueth. If lands be let for years, or given in taile, ſaving the reuerſion: upon a Graunt of the reuerſion, the Tenant of the land muſt atturne.

Lit. ch. attornm.

...turne. And an Attornment may either be ...y words; as to say, I agree or am content ...ith the Grant; or I attorne to you, and ...ecome your tenant by force of the grant: ...r else by delivering to the grantee, a peny, ...alf peny, or farthing in name of attorn...ent, or by any other matter implying an ...greement, as a surrender to the Grantee ...f the reversion, praying in aide of him, ...c. And if such attornment be not to the ...rantee in the life of the grantor, the ...raunt is meerly void.

In the graunt of a reversion depending upon a Freehold, the attornment of the Freeholder is sufficient, though he be not the tenant that presently must be charged, as ...f lands be let to a man for years, the re...ainder to another for life, and he in the ...eversion grant his reversion to another; ...he attornment of him in the remainder is ...ufficient. *Lit.* 128.

CHAP. IX.

Of Common.

Common is a profit to be taken in anothers land. As (*a*) feeding ...n beasts, &c. And if a man give to I. S. ...n frankmarriage with his daughter, Com...on for all his beasts, or other mens (if he ...ould have none of his own) to do his ...uitsels yearly, and to feed with the beasts ...f the grantor where they should go: (*a*) 9 H. 6. 35.

there

there if the grantor come afterwards to have no beasts, yet the Grantee shall have his common. But if the grant be wheresoever the beasts of the grantor go, &c. there the grantee shall not have common, but when the other beasts are in common. Also upon a grant of common throughout a manour, yet he shall not common in gardein, or land sowed, &c. nor take his common with beasts that are not commonable, as hogs, &c.

2. E. dow

So of a common of estovers, that is to say, taking of reasonable house-boot, and hay-bote &c. And such manner of estate (though they be appendant to the freehold) cannot be parted. For if such an heritage discend to parteners, one shall have the whole profits, and the other shall have an allowance. And the wife for her dower shall have but an allowance only.

Ibid. 2. E. 2.

Statutes.

Merton cap. 4. The Lord of waste woods and pastures, may approve against his Tenant, if he leave sufficient common and pasture to his Tenant, with egresse and regresse according to his land.

Westm. 2. cap. 46. Such a Lord may approve in like sort against his neighbors which have common appurtenance, and for his Wind-mill: necessary increase of Court, or Court-lodge.

Whether

Whether belongeth chemin, or way over anes land from one certain place to another, whether from close to close, or from his house, or the kings high street, or church, and other Hereditaments of like nature.

CHAP. X.

Of villeines.

HAre hereditaments that concern the person, or meerly of the persons themselves, or by reason of the person.

Of the first sort are villeins. A villein is such a servant as himself, and whatsoever he possesseth, Land, Rent, &c. but not things in action, as an obligation, debt, covenant, or warranty made unto him, is the Lords (a) if he claim it. But the wife which the villein marrieth after his purchase of land, and before the Lord enter, shall be indowed. And if he make a feoffment before the Lord enter, the feoffee shall retain it, and his Executors shall have the goods not claimed by the Lord in his life time.

22. Ass. pl. 37.

(a) 3. H. 4. 15.

19. E. 3. Dow. 171.

Statutes.

19. H. 7. cap. 15. Upon a feoffement made to the use of a villeine, the Lord may enter into the land it self.

Prerogative

Prerogative.

27 *Ass. pl.* 49. **The Lord cannot seise his villein in the Kings presence.**

18 E. 4. 13. b. 18 E. 4. *ibid.* 19 H. 6. 32. **The children of a Villein are also Villeines.** And if one confesse himself a villaine in Court of Record, the issue he had before are frank; but those born (*b*) after are villeins.

41 E. 3. *vil.* 6. **Villenage beginneth by confessing a mans self to be one in a court of Record.** And therefore in a *Precipe quod reddat*, if the Tenant say that he is Villein to I. S. and holds the land in Villenage; the Demandant saith he is frank, &c. and he is found frank by the Jury: yet he remaineth a Villain to I. S.

11 H. 7. 13. Lit. 45. **A Villeine is set free**, we call it manumission or infranchisement, **when the Lord inableth him to possess anything against himself.** As by granting him an annuity, making an obligation or lease for years unto him, or a feoffment of any lands by deed, or without: and whether it be in fee-simple, fee taile, or for life. But to make a lease at will unto him, is no infranchisement: for he hath no certainty of his estate, seeing the Lord may put him out when he will.

Statutes.

9 Ric. 2. cap. 2. In a suite by the Villeine against his lord, the lords shall not be barred

barred of their Villeins, because of their answer in Law.

CHAP. XI.

Of Annuity.

Thy ose by reason of the person. are annuities, and Corrodies, or Office.

Annuity is a yearly rent to be paid of the person of the Grantour. Lit. 48

As upon an annuity granted, or a rent out of his Coffers, or a rent out of land, without saying more. But if the deed be, That if *A.* be not yearly paid x s. at Easter, he may distrein for it in the Mannor of *D.* This is a Rent-charge (for the Mannor of *D.* is charged with a distresse) but no annuity: nor the person of the Grantor charged because he granteth not any rent, but granteth only that he may distrein. So if by expresse words he insert in the Deed of the grant of a Rent-charge, *Proviso quod non extendat ad onerandam personam meam per breve de annuitate, &c.*

CHAP. XII.

Of Corrody.

COrrody is a partition for ones sustenance. Be it bread, ale, herring, a yearly robe, or sum of money for the robe. So of a chamber and stable for my horses, when the same is coupled with other things, as with certain mess of flesh, bread, ale, &c. But a chamber and stable themselves are not any Corrody. And in the first case they shall pass without livery and seisin, but not in the other.

c 25. Ass. pl. 7. 31. H. 6. 16. Ass. 16.

CHAP. XIII.

Of Office.

OFfice is a duty of attendance upon a charge. And therefore the grant of an office to an ignorant man that hath utterly no skill at all, is meerly voyd. As if the King by his letters patents make a Clark of the Crown in the Kings Bench, which was never exercised in the Office, nor in any other Office there, & so utterly insufficient to serve the King & his people, the grant is voyd, and the Justices may

5. E. 4. Rot. 66. per Br. office 48.

may refuse him. So is the presentment of an unlearned man to a Church, meerly void. Likewise the *Non feasance* and the not attendance upon an office, hath a condition in Law annexed to it. As if the Marshal suffer but one voluntarily to escape of the prisoners, it is a forfeiture. But in negligent escapes what shall make a forfeiture of the office, & what not, both for the number of negligent escapes, & for the greatnesse and smalnesse of them (as if some that escape were committed unto him for surety of peace, & were suspitious men) lieth wholly in the discretion of the Court: & the King may himself have an office: as a forrestship granted to one in tail, the remainder to the King, & his heirs is good: for although he cannot in respect of the Majesty of his person, exercise the office himself; yet he may grant it over to one that may exercise it. 39. H. 6. 31. 1 H. 7. 29.

Statutes.

5. E. 6. c. 16. The office or deputation of any office, or any part thereof which concerneth the administration or execution of Justice, or the receit, controlment, or payment of the Kings money, &c. or surety of the Kings lands or customs, or any administration of necessary attendance in the Kings Custom-house, or the keeping of the Kings places of strength, or the Clarkship of any Court of Record, shall not be bargained & sold, or any reward or agreement of reward taken for it, upon paln, that

the seller, &c shall forfeit all his interest in the office or deputation, &c. And the buyer be a disabled person, to occupy or enjoy the same: And all bonds, &c. to be void, as against him by whom they are made. Provided, That all acts executed by any person offending before he be removed from his office, &c. shall remain good.

This Statute extendeth not to any office of inheritance, nor to any Parkership, nor to any offices to be given by the chief Justices of the King's Bench, or Common place, or by any Justices of Assise.

CHAP. XIV.

Of Franchises.

(a) 15 E. 4. 7. 4 El. Pl. 219. 6 E. 3 per 30. H 8. Dy 44.

BEside the Hereditaments already handled (a) there be certain other derived from the Kings Prerogative, which are termed Franchises. For all Franchises are derived from the Crown; and therefore are extinguished if they come to the Crown again, by escheat, forfeiture, &c. For the greater drownes the lesse.

A franchise is a royal privilege in the hands of a common person: so we call every subject: and is forfeited by misusing of it. As keeping Fair or Market upon Monday when Wednesday is

22 Ass. p'. 34.

granted

granted him: or keeping Fair upon two daies when he hath but one granted; for that is a miſuſer. But keeping market upon a Monday and Wedneſday, when only Wedneſday is granted, is a forfeiture but of that which he uſurpes more than is granted; claiming a Fair, &c. for two days by patent, when only one is granted, is a forfeiture of both. But if he claim one by Patent, and another by Preſcription, and this latter found againſt him; yet he forfeiteth but that day only. Miſuſing of any point, where there be many in one Franchiſe, is a forfeiture of them all. But not where the Franchiſes are ſeveral. But *non uſer* of a market, &c. is no forfeiture of it, as it is of the office of the Clark of a Market, and ſuch like, which of neceſſity muſt be uſed. 2. H. 7. 11. 22. *Aſſ ibid.* 2. H. 7. *ibid.*

Statutes.

27 H. 8. c. 24. No ſubject ſhall have authority to pardon any felony, or any Acceſſaries to felony, or any outlawry for ſuch offences. Nor to make any Juſtices of Eyre, Aſſiſe, Peace, Goal-delivery. All original Writs, inditements of Treaſon, Felony, & Treſpaſs, and Proceſs upon the ſame, ſhall be only in the Kings name. And the *Teſte* in his name that hath the Franchiſe.

Every Writ and Enditement whereby a thing is ſuppoſed to be done againſt the peace, ſhall be ſuppoſed to be done againſt the King's peace only, and not againſt the peace of any ſubject.

¶ The King shall have all fines, issues, & amerciaments, & forfeitures lost by any Officers of Franchises for *non* execution, or insufficient returns of processe, or for any misdemeanor concerning their office, with many provisoes in the same Statute.

The kinds of Franchises are divers, & almost infinite.

9 H. 7. 11. Of such sort are the liberty of having a Court of ones own, of drawing causes out of the Kings Court into his own. In the first case we call it *Tenere placita*, when he is to hold it before his Bailiffe in such a place, and therein a man may prescribe. In the other case we call it *Conisance of plea*: and that lieth not in prescription but in demand, & is always of Record) of returning Writs, &c. Also **Warrens** which a man may have in anothers land, as well by the Kings grant, as by Prescription. And if the King grant to one Warren in his land, and afterwards the grantee alien the land, reserving the franchise, **Markets** (a) **Fairs**, toll (b) of every buyer for things he buyeth there, not (c) being for his own expences. For (d) neither shall the seller pay toll, but the buyer: neither shall a man pay toll for the things he bringeth to the Fair, but for the things he selleth. But by custom he may for every thing brought to the Fair, & for his standing also. And whatsoever liberties or commodities else that are created first by the Kings special grant,

(a) 2. H. 7. 11. 22 Ass. pl. 34. (b) 9 H. 6. 45. (c) 28 Ass pl. 53 (d) 9 H. 6. 45

grant, or of their own nature belonging to him) are given to common persons to have any manner of estate in.

CHAP. XV.

Of Chattels: where, of Testaments.

Much then is the nature of an hereditament in his sundry sorts & kinds.

Chattels are possessions wherein there cannot be several estates.

All ones own Chattels real, as (a) a Lease for years, &c. & personal, as corn (b) growing upon land, but not trees, for they are parcel of the Freehold, &c. whether in possession, or that any is indebted to him in, but not those he is only to recover damages for, as in goods taken from him, or to be accounted for. (c) Neither could the Executor at the Common Law have an action of account or trespasse *de bonis asportatis in vita testatoris*, may be given away or devised by his Testament, otherwise called his last Will: and the things devised are Legacies.

(a) 20. E. 4. 9.

(b) *Park.* 99.

c. 7 El. Pl. 290.

Testament is an appointment of some person, whom we call an executor, to administer them for him after his death. For without naming

37 H. 8. B. test. 20.

Executors, or if they all refuse it, it is no Will at all: yet the legacies shall be paid in both cases, and the Testament annexed to the Letters of Administration. But a good will of land though no Executor be named: for land is not testamentary. And administration is it which makes an Executorship: That if one make three executors, and will that none shall administer but only one; this one is sole executor. Also the administration is for the Testator and his use, so as the Executors themselves cannot make their Will(a) of these goods, nor(b) partition between them, &c. nor the husband which marrieth a wife that is an Executor, shall have those goods by intermarriage with her: neither shall the Executors forfeit them by outlawry. Therefore Executors represent the person of the Testator. So as a villein executor may have an action of debt against his Lord, for debt due to the Testator. And outlary excommengement, &c. is no disablement to bring an action as Executor. And all of them are but one person: whereupon it is, That the release or attornment of one is good for both: that in an action brought against them, as debt, covenant, and such like; one cannot answer without the other by course of the Common Law: and that they cannot have every one by himself, a several plea in abatement of the Writ, &c.

Yet their power, both for the time when, and the things which they shall administer, may well enough be divided. As a man may

3 H. 6. 7.

(a) 19. El. Pl. 325.

(b) 17. H. 8 11. 21. H. 7. 29.

10. E. 4. 1.

Littlet. 41.

(a) 21. H. 6. 30

(b) 42. E. 3. 13.

(c) 48. E. 3. 14.

(d) 32. E. 3. Quid juris clamat.

(e) Till the Statute 9. E. 3. cap. 3.

36. H. 6. 17.

32. H. 8. B. Exc. 155.

may make *A.* & *B.* his executors, & that *A.* shall not intermeddle during the life of *B.* or make one his Executor touching his goods in *D.* and another his Executor, touching his goods in *S.*

Statutes.

32. H. 8. cap. 1. He that hath lands, tenements, or hereditaments in Soccage, and none holden by Knight-Service, or Soccage in chief, may devise all by his will in writing, or give all by an Act executed in his life. So may he that hath land holden by Soccage in chief, and other holden of a common person by Soccage, and none holden by Knights service: saving to the king, *primer seisin*, relief, suing of the same out of the Kings hands; fines for alienation &c. and all other duties for the Soccage in chief, as before hath been accustomed.

He that hath land, &c. holden by knight service (whether he have other lands holden of the King, or of any other person, by Knight service, or otherwise, or not) may do the like for two parts in three to be divided in certainty for the advancement of his wife, children, and payment of his debts. Saving to the King the Wardship or *primer seisin*, of the third part, without any charge, dower, &c. and fines for alienation.

He that hath lands, &c. holden by knight service (whether of the King alone by a Knight Service not in chief, or of a common person, or some holden of the King, some of a common person, and other lands

in

in Soccage, may devise by Will, or give by any Act executed in his life, two parts of that holden by knights service, and all the Soccage: Saving to the Lord of the land holden by Knight Service, the wardship of a full third part thereof, without any charge, dower, &c.

Provided, That every one shall sue his livery, relief, and herior, as if this act had never been made.

34. H. 8. cap. 5. The former Statute shal be extended to inhable devises or other acts only of lands in fee simple.

And if the party that maketh the Will or other act, be seised in Coparcenary, or in common, it shall be good for so much as in himself of right is.

The wardship, relief, primer seisin, &c. shall be of lands that descend immediately after the death of him that maketh the will or other act, as well in fee-taile, as in Fee simple: and the devise of two parts residue shall be good, though it be of all his fee simple lands. Such a will shall be good for two parts (in case only where two may be devised) though it made for the whole, or more than two parts.

Such wills made by any woman covert, or person within 21. years of age, Ideot, or *non sane memorie*, shall not be good.

And so some other things there, for the explanation of the former Statute.

Westm. 2. cap. 23. Executors from henceforth shall have a Writ of account, and like action and process in the same Writ,

writ, as their testator should if he had lived.

4. E. 3. cap. 7. Executors shall have an action for a trespass done to their Testator as of his goods and chattels carried away in his life, and recover their dammages in like manner, as he whose executor he is should have done if he had lived.

The Executors must prove (a) or make probate of the Will (to be a true one) in the Spiritual court, & be (b) sworne to see it performed.

(a) 21 E. 4. 24.

(b) 21 El. Pl. 544.

If many Executors be made, and one refuse; yet he may administer at his pleasure, and the other must name him in every action for any duty due unto the Testator, and his release shall be a bar of the whole duty. And if he survive the other Executor, he shall have the action, and not the Executor of him that died.

21. E. 4. 23.

Otherwise it is if they all refuse, for there the Testator dieth intestate.

36. H. 6. 9.

But an executor once administring as if he sell land in use, appoints by the will to be sould, and the mony to be disposed, &c. can never refuse after.

9. E. 4. 47

Executors must answer all certain duties of the Testator, but not for (a) a trespass done by him, burning of a Writing bailed unto him by Deed indented, receit (c) of rents, or occupation of other mens lands, as Bailiffe having sufficient of his Chattels, which we call affects entermains, to do it. And therefore

(a) 11. H. 4. 46.

(c) FN.B.117.c. fore shall be charged of their own goods, if they waste the Testators.

2.H.6.12. **But so, as duties that grow by**

11.H.7.12. **specialtie are to be answered before other duties, and legacies to be last of all delivered:** without which delivery, the devisee can neither enter (d) into a Term, nor take (e) a chattel personal devised to him. But upon a lease devised for xx. years to one for the first ten years, the remainder or remnant of the term to another: or devised to one for so many years as he shall live, the remainder to another: a Delivery to the first Devisee serveth for him in the remainder also. So, though it be but the occupation of a term, which is so devised: for the occupation and profits of the land is all one with land itself. But if the occupation of a Book, Glasse, or other chattel personal be devised to one for life, and after his death to another in like sort, there a delivery to the first, is no delivery to the other, for their occupations are several, and in such Chattels personal, the occupation is distinct from the property.

21.E.4.21.

(d) 20.E.4.9.

(e) 2.E.4.30.

37.H.6.30.

20.El.Pl.519.

20.El.Pl.539.

37.H.6.30 & per 20.El.Pl. 521.

In these devises the Testators intent (standing with the rules of Law) shall be taken. As where a man devised Lands (devisible by custom) to his son and heir after his wifes death; the wife hath an estate during her life, by implication, in the intent of the devise. A

13.H.7.13.

devise

deviſe to one and his heirs males, is an eſtate taile.

But a deviſe to I.S. in fee upon condition, if he pay not to I.D. a certain ſum of mony, then I.D. to have it in fee; is a void condition and remainder, for it is contrary to law. 27. H. 8. 27. 29. H. 8. Dy. 33

But a deviſee of the Fee-ſimple to Alice and after her death to B. is only an eſtate for life, the remainder for life to B. the remainder to Alice in fee. So as the husband of Alice (if ſhe dy in the life of B.) cannot be Tennant by curteſie. 19. El. Dy. 357

The Executor of an Executor, is Executor to the firſt Teſtator, and may have an action of debt for the arrearages of an annuity due unto him. 10. E. 2. Ex. c. 110.

Statutes.

25. E. 3. cap. 5. Stat. 4. Executors of Executors ſhall have Actions of debt, account, and of goods carried away of the firſt Teſtators: and execution of Statute merchants, and Recognizances made unto him.

If no will be made, the Ordinary ſhall adminiſter all the chattels that were in his poſſeſſions. For he which had the charge of his Soul in his life, is preſumed the fitteſt perſon to have the care of his diſpoſing the goods in *pios uſus* after his death; and therefore the ordinary may ſeiſe the goods, and muſt 7. El. Pl. 277.

keep

keep them without wasting, and may give, alien, or sell them at his will, and dispose the mony coming thereof, *ad pios usus*; and if he do not so, he breaketh the confidence which the law reposeth in him. But yet his gift or alienation remaineth good by law. Howbeit being a spiritual Governor, he shall not be subject to temporal suits, nor have any action of debt or otherwise for any thing due to or by the intestate.

Statutes.

Westm. 2. cap. 19. The ordinary shall answer for debts wherein the Intestate was bound, as Executors should.

31. E. 3. cap. 11. The Ordinaries shall depute next friends of the intestate to administer his goods, who shall sue and be sued, and be accountable to the Ordinaries, as Executors should.

21. H. 8. cap. 5. Administration shall be committed to the widdow of the Intestate or to the next of his blood, or to both, at the discretion of the Ordinary. Where divers persons next of the blood (which indeed are in equality of degree with the intestate) claim administration, or where one only claimeth it as next of the blood (where in truth divers are in equality of kindred, as aforesaid) the Ordinary shall be at his choice to accept one or more, making request. Where but one or more, and

and not all (being in equality of kindred) make request, the Ordinary shall be at liberty to admit the Widdow, and him or those only making request, or any one of them, at his pleasure. The Ordinary shall commit administration according to the rule aforesaid, upon pain of ten pound.

The Statute **Mag: Char: cap. 18.** is, That the Kings debts shall be levied of the dead mans goods, and the surplusage delivered to the Executors *Salvis pueris, & uxori rationabilibus partibus*, which proveth that this *rationabile parte* was at the common law.

But (a) whether any will be made or no, his wife, and such children as are not advanced by him in his life (as if a daughter be covenably married by him, this is a sufficient advancement) shall have a part to their own use; that is to say, one third of all (after his debts paid) to his wife, and the other to his children. And a Writ *de rationabili parte bonorum* is given to recover it.

(a *Magn. Char.* c. 28. 16. & c. ut in F.N.B. 122. l. 4. *Br. ration. par.* 6.

(b) 3. E. 3. *det.* 156.

CHAP.

CHAP. XVI.

Of Chattels Real.

CHattels, are Real, or Perſonal.

Real, as terms for years, and wardſhips, whereof we have ſpoken before.

CHAP. XVII.

Of Chattels perſonal.

PErſonal as Plate, Jewels Silver, Gold, Implements of Houſhold, Cattel, and all goods and moveables whatſoever, Corn, ſown upon the ground &c. For that is deviſible by will, ſhall be forfeited in outlary of debt or treſpaſs.

Park. 99.5.*H.*7 10.

The Owner[ſ]hip of a chattel perſonal, is termed a *Property*, which of wild beaſts both Fowles of the aire, Fiſhes in the Sea, Beaſts upon the Earth, and generally all Fowle of Warrein Feaſants, Patridges, Deer, Conies, Hares, and ſuch like cannot be in any and therefore it is no Felony to ſteal them: and a writ of Treſpaſs ſhall be *Quare warrenam ſuam intravit & mille lepores cepit*, without ſaying *ſuos*, Nor after they are made tame, longer then they remain

3.*H.*6.55.12. *H.*8.3.18.*H.*8. 2.

For fowle of Warrein.

12.*H.*8.3.18*H* 8.2.3. *H.*6.55.

remain in ones possession. As my tame Hound that followeth me, & is with my servant, my Hawk that is flying at a foul, my Deer that is chased out of my Park or Forrest, and the Forrester maketh fresh suit: these all remain in my possession, and the property is in me: but if they stray, it is lawful for any man to take them. Otherwise it is of Hens, Capons, Geese, Ducks Peacocks, &c. 12. H. 8. 3. 12. H. 8. 11. 12 H. 8. 3. & 11. 18. H. 8. 2.

Prerogative.

Treasure hid in (a) **the earth**, not upon the earth, nor in the Sea, **and** (b) **coyn** though not hidden, **being found** (c) **is the Kings**: we call it treasure-trove.

(a) *Stamf.* 40.
(b) 27 *Ass. pl.* 19.
(c) 10. *El. Pl.* 322.

Cattel also that stray into anothers land are the Kings after a year and a day if being proclaimed at the Market in 2 **several towns next adjoyning, the owner do not claim them.** For if a Lord keep a stray three quarters of a year, and yet within the year it strayeth again, and another Lord getteth it, the first Lord cannot take it again: for till a year and a day past, and Proclamation made, he hath no property. And therefore the possession of the second Lord is good against him.

(d) 14. *H.* 6. 5
(e) 31 *E.* 3. *estray.* 4.
(f) *Br. estr.* 10.
(g) 33 *H.* 8 *Br. estray* 4.

Goods wrecked are also his.

Stamf. prer. 37. & *D. St. per. Br. wrecke* 3. *that this was at the common Law.*

Statutes.

Mert. 1, c. 4. Where a man, dog, or cat

cat escape alive out of ships, it shall be no wreck. But the things shall be prized by the Sheriffe or Coroner, and delivered to those of the Town where they be found, to answer for them. So as if any within the year and day prove that the goods be his, they shall be restored to him.

10. El. Pl. 322. **The King being tenant in Common of an entier Chattel personal, shall have the whole.** As if an obligation be made to 2, or 2 possessed of a horse, & one is attainted, the King shall have the whole duty of the obligation, & the horse.

(a) 7. E. 4. 13. 38. H. 8. Br. denizen 10. 8. 16. 10. **Goods that belong to an alien enemy,** (a) **any body may seise to his own use.** But an alien born in amity may have property in goods, and buy and sell, and their bargains good: and may also bring personal actions.

7 E. 4. 13. **The taking of goods by an alien enemy in battel, divesteth the property from the owner, if he come not before Sunset to claim them.**

12. H. 7. 27. **Churchwardens are enabled to have goods to ỹ behoof of the Parish.** For they are charged to find divers things belonging to the Church, as ornaments, & such like: And therefore in reason they should be enabled to purchase goods. And thereto extendeth their Corporation. And all the Church goods, as (a) books & ornaments, (b) bels hung up in the Church, are theirs, and (c) they may have an appeal of robbery of them, or a (d) trespasse, and

(a) 8 E. 4. 6.
(b) 11. H. 4. 12.
(c) 11. H. 4. 12.
(d) 8. E. 4. 6.

coun,

cause to the damage of the Parishioners. But they cannot give or release them, for that is to the disadvantage of the Church. And if they do, the Parish may chuse new Church-wardens, who shall have an action of account against them (g) But Church-wardens are not enabled to take a feoffement, a lease for life, or perhaps for years, or such other things as have continuance.

13. H. 7. 10.
(f) 8. E. 4. 6.
(g) 12 H. 7. 27

CHAP. XVIII.

Of Baylement and Contracts.

TO Chattels personels, Bailment, & Contracts do belong. Baylment is a delivery of goods in possession and is either to keep or employ. To keep when only the custody is committed to him, and is a simple Baylment or pledge.

A simple Baylment, when he receiveth them to keep for another; whether it be for the Bailor to redelivor him again; in which case the Bailor may retake them without request: or for a Stranger to bayl them over to him. In which case, before such bayling over, the Bailor may countermand the Bailment, and command the Bailee to deliver them him again, and shall have an account upon refusal. For in neither of these cases the property is out of the Bailor.

5. H. 7. 18.
1. E 5. 2.

A pledge is when he receiveth them

5. H. 7. 1.

them in assurance for another thing had of him at the time. As to take a chain of gold for mony then delivered, &c. but not for satisfying of a debt he oweth. But the property of the p'edge remaineth in the owner; for he shall bear it if it be casually lost or broken: and the other that hath the pledge, shall not be attached by it, in as much as he is not owner.

The baylement of goods to employ, is, when the Bailée hath the things themselves to use to anothers profit. As to sell *meliori modo quo poterit, &c.* Where, if he sell that for 12 *l.* which is worth 1000 *l.* and refuse a better price, the party hath no remedy.

Contract is a mutual agreement for the very property of personal things where the duty growing upon it cannot be apportioned. As if I sell my own horse and the horse of I. S. to one for x *l.* and *I. S.* taketh his horse from the vendee, yet the vendee must pay me the whole x *l.* Of this kind of contracts are buying and selling, borrowing and lending, and such like. & in all these cases an action of debt lieth.

The sale of another mans goods in open market (we call it market overt) without Covine or notice whose they are, altereth the property if toll be paid for it.

Hither belong certain (as it were) contracts in Law, though not

not arising from the ſpecial agreement of the parties. As he that findeth anothers goods, is chargeable by reaſon of the poſſeſſion to him that right hath: he that receiveth money to ones uſe, or to deliver over to him, is chargeable as a receiver. He that entreth into land of his own head, and receiveth the profits of it, or parents that occupieth land purchaſed by an Infant, are chargeable as Bayliffes. And if a Liberate be delivered to the Clark of the Hamper, who hath aſſets in his hands an action of debt lieth againſt him. So doth it upon every judgment.

CHAP. XIX.

Of Accord and Arbitrement.

These are the things which belong to Chattels perſonal in general: for the intereſt of perſonal things, uncertain, accord (otherwiſe called a concord) and arbitrement lie, as of a treſpaſſe done, for the damages are uncertain; but of debt or damage recovered in certain, it is otherwiſe, unleſſe it be joyned with treſpaſſe or other things uncertain: for then all put together, lie in arbitrement or concord. So of Waſt, detinue of charters of land, which are things in realty, annuity, &c. they lie not in arbitrement or concord.

Accord is an agreement betwæn

the parties themselves: not by mediation of friends; for then it is an arbitrement **upon a satisfaction executed.**

15.H.6.accor.1 As for one at his own cost to agree I.S. & another, whom I.S. hath trespassed; this may be a satisfaction to I. S. Otherwise it is, if he do but endeavour to agree to them. And this satisfaction must be executed: for a tender (a) of money without payment, or an (b) agreement to pay money at a day to come, is no satisfaction before the day come, and the money be paid, nor shall be pleaded in bar of an action of Trespasse: for upon an accord, the party hath no means to compel him to pay it, as he hath upon arbitrement. But being paid at the day, it is a good plea if the other afterwards bring an action.

(a) 17.E.4.8.
(b) 6. H.7.11.

(c) 16. E. 4 9. **Arbitrement is an award of satisfaction by others whom they chuse to judge between them.** As to arbitrate because A. (one of the parties) hath done a greater trespasse to B. (the other party) than B. hath to him; therefore that A. should give B. money in satisfaction, and B. be quit against him, is a good award. But that one shall be *non suit* in an action, is not good; for after *non suit* he may begin again, whereas the arbitrement (which must be in some sort a satisfaction for the damages) ought in that respect to be a determination of things awarded.

19 H.6.36.

where the award of a personal chattel altereth the property thereof.

So

So as he may have a detinue (a) for it, or debt if it be of money, or ſuch like, to be paid for (b) a debt due, or (c) amends of a Treſpaſs. And therein an arbitrement differeth from an accord.

But an award of an acre of land, &c. is not good unleſſe the acre be delivered.

(a) 2. El. Dy. 183.
(b) 16. E. 4. 9.
(c) 19. H. 6. 38.

Et jam prima mei pars ex exacta laboris.

The Third Book of LAW.

CHAP. I.

Of a wrong without force.

FOr of poſſeſſions (the firſt and hardeſt part of Law) we have hitherto ſpoken ſufficiently. The other reſteth, which miniſtreth Juſtice in the puniſhment of offences.

An offence is the doing of any wrong. And is a wrong without force, or to the which force is coupled

In thoſe of the firſt kind, the offendor is to be amerced, or to pay a petite ſum of money to the King. And (a) if he be a Lord of the Parliament (whom we call a Peer of the Realm) then a Fine. As if (b) ones writ abate, or if in (c) an action of Treſpaſſe

(a) 38.E.3.31. 9.H.6.2.
(b) 38.E.3. ib.
(c) 9.H.6. ibid.

paſſe againſt two, for hunting and taking two Deere, one Defendant be found not guilty, the other guilty of taking only one Deer; here the Plaintiff (if he be a Peer of the Realm) ſhall be amerced CC.s. one C.s againſt him that was found not guilty at all: the other hundred ſhillings againſt him that was acquitted of one of the Deer.

The Kings wife ſhall never be amerced. And therefore a writ brought by her is good enough, though this clauſe, *ſi fecerit te ſecurum*, be left out, for ſhe ſhall not be ammerced for her *non ſuite*. 18. E. 3. 2. *br.* 355.

CHAP. II.

Of Treſpaſſes upon the Caſe.

OFfences without force. are treſpaſſes upon the Caſe, or Real wrongs.

Treſpaſs upon the caſe is ſuch an offence, whereby any thing is indamaged. And is a miſuſer or deceit.

Miſuſer, when by meer wrong it is indammaged. Of which kind there be many, and thoſe of divers ſorts. As if a man malictouſly utter any falſe ſlander to the indangering of one, in Law. As to ſay, he hath reported that mony is fallen, for he ſhall be puniſhed for ſuch a report, if it be falſe. 9 El. Uttings caſe.

The touching of him with ſome hai-

nous

Sir Tho. Cokains case.

(a) So it hath bin adjudged.
b) 26. El. Cracknel 5. c.
(c) 32. El. Cobs against Hames adiudged.
a) 27. El. Hacks c.
(b) 27. El. Barrons case.
(c) 26. El.
(d) 27. El. Bure. case.

(e) All these cases have so bin adiudged or commonly received for Law.
13. H. 7. per 11. El. Dy. 285.
40. H. 8. Br. Act. sur case 104.
(f) 32 El. Novels case.
(g) 7. El. D. 236.
(h) it hath been oftentimes adiudged that in such cases the conversion is traversible.
(i) 7. H. 6. 5. & 17. El. in Manfers case no action of debt lieth upon it (as the Common Law) but an action of Trespass upon the case.

nous crime, as that he hath gone about to get poison to kill the child that such a woman goeth with (yet it is no felonie;) lien (a) in waite to rob him; procured (b) another or agreed (c) with another to murder him (though he were not murthered in Deed;) (a) sought his life for his land, &c. or the impairing his trade of life; as to call a merchant (b) bankrupt (for it is his living, but so it is not of a Gentleman;) an Attornie (c) Ambodexter, or to say that he dealeth (d) corruptly. But in all such cases, words of choller and heat, as to call one Cosoner (e) and Crafty knave, common extortioner, and drunkard, witch, rogue, Pillory-knave, Villein (unless he say villaine to such a man, or regardant to such a mannor;) words uttered in a suit of law, as to bring a Writ of forger of false deeds against a nobleman, or any other (though it be false) will bear no Action; for these are not maliciously. So if he be able to justifie the words, for then it is not falsely. As that he called him perjured, by reason of a perjury committed in the star-chamber, murderer, thief, or such like, upon a conjunction; (f) but not upon an Inditement or common voice and fame, though the defendant himself suspect him. If one having another mans goods, (h) convert them to his own use: if a (i) Sheriff suffer one in execution for debt to go at large:

if

if a Smith (k) clog my horse: but not if he take him to cure (without warning of him) and doing all he can, yet the horse impaire. If being committed to the Gaole, the Gaoler of malice put upon me so many Irons, or otherwise use me so hardly that I become lame thereby, &c.

(k) 48. E. 3. 6. F. N. B. 93. H.

Statutes.

Westm. 1 cap 33. He that publisheth any false News and tales, whereby discord or occasion of discord and slander may grow between the King and his people, or the Nobles, shall be kept in prison until he hath brought him forth into the court, that did speak the same.

2 R. 2. c. 11. The like for him that telleth false lies of Nobles and great Officers of the Realm, whereby discord may arise between the said Lords and Commons.

12 R. 2. c. 11. In the case of these former Statutes, if the party cannot bring forth him that spake the same, he shall be punished by the advice of the Councel.

But two above the rest do here require more special consideration; that is to say, disturbance and Nusance.

Disturbance is the hindering of that which in right belongeth unto one to do. As for a man to use his common, to reduce a Water-course that is misturned,

misturned, to present unto a Church &c.

F.N.B. 184. a. F.N.B. 184. d. **Nusance is annoyance done to ones hereditament.** As levying a fair or market to the Nusance of another Fair or Market, building a house so near mine, that the rain which falleth from that house falleth upon mine, &c.

All manner of nusances are to be removed, and common nusances.

(a) 33. H 6. 26. (b) 42 Ass. pl. 5. As a wall, (a) &c. built upon the Highway, trees (b) growing upon the river bank, whereby a water-course is stopped, **any man may pull down.**

F.N.B. in his Writ of deceit. **Deceit when the dammage groweth by an undue sleight.** As if a man purchase a writ in my name out of the Chancerie, I not knowing of it, whereby I am to pay a fine; or if one (whom I make my Attorny in a plea of land against finee) make default, whereby the land is lost: Or if in a *Præcipe* against divers Tenants, a man purchaseth a protection for one of them, supposing him to be beyond-sea in the Kings service, where indeed he is and always hath been in England, by means whereof the demandant is delayed: or if in a *Præcipe quod reddat*, the Sheriff return the Tenant summoned, where indeed he was not, whereby he looseth the land: or **if in play one win anothers mony with false dice, or if he that selleth any thing do upon the sale, warrant it to be thus and thus, whereby the other is deceived.**

tribed. So that the warranty must be parcel of the contract: for if it be (a) after, (in another place) or (b) a servant make the warrantie upon the sale of his masters goods (which in law is the masters sale, and warranty of the servant) it is a void warranty, and no action of deceit lieth upon it. Also the warranty can reach but to things in being at the time, not to things to come: as that a horse (c) will carry you xxx. miles a day: nor to things which may be discerned by my five senses to be otherwise, as cloths of murry color to be blew, unless the buyer in this case be blind. But where they are warranted to be of such a length, and are not, there an action of deceit lieth: for that cannot be discerned by sight, but by a colateral proof, the measuring of them.

(a) 5. 7. 41.
(b) 11 E. 4. 6.

CHAP. III.

Of certain offences punishable by amercement by the Kings Prerogative.

Certain offences against the Law, are in nature of trespasses upon the case, and by the Kings prerogative punishable like to the. As suing an act on without just cause, or giving just cause of an action: for (a) in every actio where the matter passeth against the Plaintiff (be it by verdict, demur or otherwise) the Plaint. is to be amerced, & the Defen. in debt, detenue, covenant, replevin,

(a) *So are all precedents.*

Quid

(b) 11.H.4.45. (c) 22.ass.pl.32 (d) 7.H.6.36. 40.E.3.10. (f) 10.E.4.Br. amerciamen.46.

Quid juris clamat, &c. (b) but not in Trespass, for there he shall be fined and imprisoned. **Non-suit** (c) **in an action,** (d) **fault in the original writ he bringeth:** or (by the Sheriff) **in the return of a Writ,** making (f) **default when he should appear,** (as the Jurors at the *Habeas corpora*) **and whatsoever other offences** (not being with force and armes) **which offer no direct injury to a common person.**

CHAP. IV.

Of Discontinuance.

HItherto of Trespasses upon the case.

A Real wrong is that which meeteth with the Freehold otherwise than it ought, and is a discontinuance or ouster.

Discontinuance, when he that hath an estate taile, or Fee-simple in anothers right, as the husband in right of his wife. A Dean sole seised in the right of his Deanrie; Dean and Chapter, Gardeine and Chaplein; as also Maior and Comminalty of lands in the right of their Corporation, **maketh a larger estate of the land then he may.** As by a fine or Feoffment for life of the Lessee, in taile or in fee, which is called a discontinuance. But the Graunt of a Rent, release or confirmation to a Lessee for yeares in

in fee, make no diſcontinuance, for they paſs without livery, and therefore paſs no greater eſtate then the Grauntor had.

Statutes.

32 H. 8. cap. 28. All Leaſes by deed indented for life or years, by any perſon of full age, having an eſtate in fee or in fee-taile, in his own right, or in the right of his Church, or wife, or joyntly with his wife, ſhall be perfectly good.

This extendeth not to Leaſes of land in the hands of any Farmer, by vertue of any old Leaſe, unleſs the ſame be expired, ſurrendred or ended within a year after the making of a new; nor to the grant of any reverſion, nor to any leaſe of land which hath not moſt commonly been let, or occupied in farme by the ſpace of twenty years next before, nor to any Leaſe made without impeachment of waſt, or made for above twenty years, or three lives from the day of making. And that there be reſerved yearly payable to the Leſſors, their Heirs and Succeſſors, according to their Eſtates, the rent accuſtomably yielded within twenty years next before: which heirs and ſucceſſors ſhall have the like advantage againſt the Leſſees, their Executors and Aſſigns, as the Leſſor himſelf might. Provided the wife be made party to every leaſe by the husband of any land of her inheritance. The leaſe to be made by Indenture in both their names, and ſhe to ſeale the ſame, and the rent to be reſerved to the husband

and

and wife, and her heirs, according to the estate of inheritance.

13. El. c. 10. All grants, Feoffments, Leases, and other conveyances and estates by any Master or Fellows of a Colledge, Deane and Chapter, Master or Gardein of an Hospital, Parson, Vicar, &c. other than for xxj. years, or three lives, from the time of such lease or grant, reserving the accustomable yearly rent, yearly payable, shall be void.

14. Eliz. cap. 11. The Statute 13. El. c. 10. before, shall not extend to grant assurance, or lease of any house in City, Borough, Town corporate, or Market Town, or within the Subburbs, (the same not being their dwelling house, or having above ten acres of ground belonging to it.) Provided the lease shall not be made in reversion, and the accustomed yearly rent shall be reserved, the Lessees charged with reparations, and it shall not be above forty years. No alienation shall be of such houses, unless that presently upon such alienation there be an absolute purchase in fee-simple of other lands of as great value.

18. El. c. 11. All leases made by such persons (as 13. Eliz. c. 10. before) where another lease for years is in being, not to be expired, surrendred, or ended within three years next after the making of such new lease shall be void. All bonds and

and covenants for renewing or making of any leaſe, contrary hereunto, or to 13 El. C. 10. before, ſhall be void.

1 El. not printed the like (as 13 El. C. 10. before) for Archbiſhops and Biſhops, unleſſe it be of eſtates made to the King, his heirs and Succeſſors.

32 H. 8. c. 28. No fine, feoffement, or other act by the husband only, of any land being the inheritance or freehold of the wife, ſhall be a diſcontinuance or prejudicial to the wife, or ſuch as have intereſt after her death: leaſes within the compaſſe of this Statute only except.

Warranty of an eſtate of inheritance, or for life, deſcending upon him that ought to have ſuch eſtate, makes a diſcontinuãce As if tenant in tail of an advowſon in groſſe, ſuffer an uſurpation by ſix moneths, the releaſe of a collateral anceſtor with a warranty is a diſcontinuance, for he hath fee by the uſurpation.

So it ſeemeth of a collateral anceſtors releaſe, with warranty to the Grantee in fee of a rent or advowſon in groſſe by Tenant in tail But if tenant in tail of a rent or advowſon in groſſe grant it in fee, with warranty; this is no diſcontinuance, but at the pleaſure of the iſſue.

Diſcontinuance taketh away the entry of thoſe that come to have title after his death. If he (whoſe entry is barred by a diſcent or diſ-

continuance) have the Freehold cast upon him by a new title, he shall be in of his ancient title: which is termed a remitter. As if the heir of the disseisor (in by discent) make a lease for life to I. S. the remainder for life or in fee to the disseisee, if tenant in tail discontinue, and then disseise the discontinuee, & die seised, whereby the lands discend to his issue; if the husband make a feoffment in fee of land in the right of his wife, and take back an estate in fee to him and his wife. In these cases the disseisee after the death of I. S. the issue in tail, and the wife surviving, her husband is remitted: but if the husband survive, her heir is not; for there is another tenant of the Freehold, against whom he may bring his action. And in the case of tenant in tail before, though the heir of the Discontinuee were within age at the time of the discent to the issue in tail, yet his entry is gone for ever, by reason the Issue is remitted.

Lit. 152.

11. E 4. 1.

21. E. 3. 16.

CHAP.

CHAP. V.

Of Intrusion, Abatement, Disseisin and Usurpation.

OUster is, when the Freehol-der is ousted, or put out. And therefore it gaineth a Freehold unto the party.

This ouster is of a Freeholder in Deed or in Law. Of the first sort are Intrusion or Abatement.

Intrusion, which is after the death of Tenant for life, be it a mans own life, or another mans, Tenant in Dower, or by curtesie, &c. *Old Nat. Br. 135.*

Abatement, which is after the death of one that hath the inheritance, whether the land discend unto his heir, or he die without heir. *5. H. 7. 6.*

Of the second sort are, disseisin and usurpation.

Disseisin is the ousting of him that hath a Freehold in Deed: which of a rent or other profit is by the disturbing of him in the means of coming to it. As in every rent, whether Rent-service, Rent charge, or Rent-secke, Encloser & Fore-staller. *Lit. 62.* *Lit. 52.*

Encloser is, when the Tenant encloseth the Land, so as he cannot come to distrein, or to demand it.

But if it be a Park or ſuch like, that hath of ancient time been encloſed, ſo as it is not done of purpoſe to keep him from his rent, that is no diſſeiſin.

99 E. 3. 15.

Foreſtaller is, when the Tenant beſetteth the way with force and Arms upon his coming. Of which nature alſo is the menacing of him that for doubt of ſome bodily hurt, death, or loſſe of member he dare not come.

In a Rent ſervice and rent charge Reſcuous and Replevin.

Reſcuous, when either the party having diſtreined, the diſtreſſe is reſcued, or being upon the land to diſtrein, cannot be ſuffered.

Replevin is, when an action of replevin is brought upon a diſtreſs taken.

In a Rent-charge and a rent-ſeck denier.

Denier is, when the Rent being demanded upon the land is not paid

Uſurpation is, when the Church becometh full by the preſentment of a wrong Patron: which is done by the inſtitution of the party preſented.

Prerogative.

But againſt the King, Inuocation only doth it. Therefore at the Com-

mon

mon Law, in a *Quare impedit*, Plenarty day of the Writ purchaſed, is a good plea, though it be by inſtitution only. And the Plenarty by ſix moneths (which barreth the right Patron of his *quare impedit*, by the Statute *weſtm.* 2. *c.* 5.) is accounted from that time between common perſons. So is it for the King when he preſenteth. And in theſe caſes the Ordinary may certifie a plenarty without making mention of any induction, but of admiſſion, and inſtitution only. But againſt the King plenarty is accounted from the time of induction, and not before. And if a Patron that holdeth of the King, preſent, and die after admiſſion and inſtitution of his Clark, and before induction; the King ſhall preſent a new. Otherwiſe it is in the caſe of a common perſon. But plenarty is no plea in a *quare impedit*, againſt a perſon imperſonee (that is, a ſpiritual body politick, which being Patron, hath the Church appropriated in ſucceſſion (*viz.*) to hold to their proper uſe, without preſentation, inſtitution, or induction of any Incumbent) for his plea muſt be, That the Church is full of his preſentment, which a perſon imperſonee cannot ſay.

Statutes.

Weſtm. 2. *c.* 5. Uſurpation upon Gardens tenancy in Dower, or upon femes covert, or houſes of religion in time of vacation, ſhall not put the heirs femes, or houſes of religion out of poſſeſſion. But

faint recoveries ſhall not be avoided in ſuch caſes by way of plea.

Plenarty is no plea in a *quare impedit*, or darrein preſentment, if the Writ be purchaſed within vj. moneths.

When one parcener preſents in another's turn, yet this gaineth no poſſeſſion: for the other may preſent when her turn cometh again.

CHAP. VI.

Of Treſpaſſes in goods.

Such is the nature of an offence without force.

An offence with force is a treſpas (or offence) againſt the Crown. For in all Inditements and Inquiſitions of treaſon, murder, felony, treſpaſs, &c. *vi & armis* muſt be in, elſe it is not good.

Stat. 37. H. 8. c. 8. executeth the Common Law to be ſo.

Treſpas is a criminal offence punishable by a fine unto the King. So is every contempt puniſhable: and for this reaſon no action of Treſpaſs lieth for the Leſſee for years, againſt the Leſſor, (though he diſtrein without cauſe) for that the Statute of Marlebridge, c. 4. is, That he ſhall not be puniſhed by fine and ranſom; which if he be attainted in this action, he muſt needs be, and for this the party muſt be impriſoned till he do compound. Therefore after tender of his fine, the King cannot juſtly detain him in priſon.

Treſpaſſes

Treſpaſſes touch poſſeſſions or the perſon. Poſſeſſions, when the wrong is done in them, namely in goods or land.

Treſpaſſe in goods, is the wrongful taking of them with pretence of title. And therefore altereth the property of thoſe goods. So as one cannot declare in an Action of treſpaſs, that the defendant took his horſe at S. and carried him to D. and there killed him againſt the peace, &c. For by wrongful taking, the property being diveſted out of the plaintiffe, and veſted in the defendant, conſequently it followeth, that he cannot kill his own horſe againſt the peace.

CHAP. VII.

Of Treſpaſſe in Land.

TReſpas in land is, when the treſpas is done upon an actual poſſeſſion thereof. For of a treſpaſs done (a) after the death of the Anceſtor, and before the heirs entry, after (b) breach of the Condition, and before entry for it; where a leaſe for years is made, reſerving a rent, upon condition to be void if the rent be not payd; or after Michaelmas, & before the Leſſees entry, where a leaſe for years is made to begin at that day: no action lieth for the heir in the firſt caſe; for the leſſor in the ſecond, nor for the leſſee in the third, Becauſe they were not ſeiſed

(a) 12. H. 7 22.
(b) 1 Mar. Pl. 142.
Pakr. 4.

sed of the Land at the time of the trespass done; yet the Lessor in the second case might have made a new lease before his entry; for the first lease was meerly void, and the Lessee in the last case, might before Michaelmas grant away his term.

21.H.7.39. **Where beasts or any other chattels** shocks of Corn, or whatsoever else, whether Conisance may be of them to bring a replevin, or not: **that so the trespasse may be distreyned by him that hath**

35 H.7.13. **dammage by it.** As one that hath Common out of land, though he have nothing in the land it self, so as he can have no action of trespass against the owner of the beasts, for their entry into the land, nor the grasse wasted, &c. yet he may distrein them dammage feasant, because of the dammage he sustaineth. But so cannot *cesti qui use*: for he hath nothing at all to do in the land, save that there is a confidence between the feoffees and him: but the feoffees may punish him by the Common Law, if he occupy the land, for he is but a meer stranger. And if a stranger of his own head drive out beasts that are damage feasant, the owner of the beasts shall punish him, for he is indammaged by this driving out. and the other hath no losse.

F.N.B. 220.f. 3.H.6.1. **Either belongeth estatment, when a termer for years of land is ousted:** Whether by the Lessee or a stranger, but not a Termer for years of beasts or other Chattels.

Prerogative.

Prerogative.

Here (*viz.*) of land, which is a thing permanent for things transitory and removeable: the King may be put out of his poſſeſſion, and have his action according, as 1 *H.*7.19. raviſhment of gard, *quare impedit*, &c. But of things permanent, he cannot have an Action, as a *Præcipe quod reddat*, ejectment of ward, &c. becauſe of ſuch things he cannot be put out of poſſeſſion: the King having poſſeſſion by matter of Record, or other good title, none can put him out. *Stamf. prer.* 74 But if having no title by matter of Record, or otherwiſe, he enter upon me, & put me out, there if I enter again, my entry is lawful, & no intruſion. So if the King ſeiſe upon an office, finding that his tenant died ſeiſed but of an eſtate for life, the reverſion to another; he in the reverſion may enter, and make a feoffment: for the King ſeiſeth by colour of a Record, which record giveth him no title indeed. 8 *H.*4. 16 *per Stamf. pr.*57.

CHAP. VIII.

Of Menaces.

TReſpaſſes to the perſon are with pretence of violence, or violence indeed.

Pretence of violence, as Menaces and Aſſaults.

Menaces are threatning words of

(a) 18 E 4.28. (b) 7. E. 4.24. of beating one, or such like, through fear whereof ones business is hindered. For a menace only (without other losse) maketh not the Trespass, but both of them together.

CHAP. IX.

Of Assault.

(e) 40 E 3. 40. (d) 22. ass. pl. 9. An Assault is an unlawful setting upon ones person. As offering to beat one, though he do not beat one indeed, striking (d) at one with an Hatchet, or such like, though he do not touch him. Whither belongeth lying in wait, besetting his mansion house, & not suffering his servants to go in and out, &c.

Book of entries Fol. 552

CHAP. X.

Of false Imprisonment.

Violence indeed, is false imprisonment, or bodily hurt.

(a) 22 Ass. pl 85. False imprisonment is an unlawful restraint of liberty. As (a) arresting one against his will, though it be in the High-street, and he never put in prison in any house; detaining of a woman (b) against her will, whom he hath ravished. So if a (c) master imprison one without cause, and deliver the key of the door

(b) 43 E. 3. 26 (c) 21 E. 4. 45.

to

to a servant that hath notice of his wrongful imprisonment of him, if the servant deliver him not, he shall be punished in an action of false imprisonment. But if the imprisonment be upon a false and feigned suit, as in suing (d) execution upon a Statute marchant, when the money is paid, yet no action of false imprisonment lieth, for he is imprisoned by course of Law.

(d) 43 E. 3. 33

CHAP. XI.

Of Battery.

BOdily hurts are either outward violences only, or Rape.

Outward violences only, are Battery and maime.

Battery is the wrongful beating of one. But if a man will take away my goods, I may lay my hands upon him, and disturb him, and (if he will not leave) I may beat him, rather than he shall carry them away, for that is no wrongful beating.

9 E. 4. 28.

CHAP.

CHAP. XII.

Of Maime.

Maim is the wrongful spoyling of a member defensive in fight. As cutting off ones finger, knocking (b) out ones fore-tooth, (c) putting out his eye, &c. Otherwise it is of knocking out his grinding teeth, cutting off ones eer, nose, &c. for these are but deformities.

(a) 18 E. 3. 94.
(b) 8 H. 4. 31. Cor. 458.
(c) Brit. & Bra. p. Stanf. 38. b.

CHAP. XIII.

Of Rape.

These are outward violences only: Rape is ỳ carnal abusing of a (d) woman against her will. But if the woman conceive upon any carnal abusing of her, that is no rape, for she cannot conceive unlesse she consent.

(d) 9 E. 4. 6.
(e) Br. per St. 24.

Statutes.

6 R. 2. c. 6. If the woman after rape consent, as well the as the ravisher be disabled to have any heritage, dower, or Joynt-feoffement after the death of their husbands & Ancestors, and the next of bloud shall have

have title to enter incontinently.

CHAP. XIV.

Of Contempts

Certain offences against the King are in the nature of trespasses, and are termed contempts: as (a) making rescous upon his Writ served, (b) going armed in his Palace, &c. where sometime the punishment is increased according to the quality of the offence, not only in the fine, but further, in the loss of member, and such like. As a Juror appearing, and being challenged, if he do not appear upon demand, when he is found indifferent, shall be fined by the value of his land by a year. He that smiteth a man (d) in Westminster Hall, or a Juror in the presence of the Justices, shall have his right hand cut off, his land and chattels forfeited, and in the latter case be committed to perpetual prison.

(a) 38. H. 3. 9.
(b) 24 Ed. 3.

36. H. 6. 27.

(d) 41 E. 3. Cor. 280.
(e) 19 E. 3. Judgment 174.

CHAP.

CHAP. XV.

Of Offences against the Crown.

THus much then of Trespasse, it remaineth to speak of offences against the Crown, which are criminal offences, punishable by death.

Where for ther also all the offenders both hereditaments, as lands, rents, &c. whether for life (a) only, or of (b) an estate of inheritance, and chattels not only in possession, (c) but such as he hath but a right to, as land, (d) whereof he is disseised, debts, (e) goods (f) to be accounted for, or wrongfully (g) taken; But (h) not such as he is to recover but dammages for, as in battery, &c. are forfeit to the King. And that as well in Felony, as Treason, save only in felony land of inheritance is forfeit to the Lord, as appeareth (i) afterward.

(a) *Stamf.* 186 b. & 190.
(b) 22 *ass. pl.* 4 *in high treason.*
(c) 22 *ass. pl.* 63.
(d) 6 H. 7. 9.
(e) 29 *ass. ibid.*
(f) 10 *ass. pl.* 5.
(g) 29 *ass. pl. ibid.*
(h) 29. *ass. ibid.*
(i) *chap.* 16.

Hereditaments (k) from the time of the offence, whether the attainder be by Outlawry, verdit, or howsoever else) Chattels though real, (l) as a lease for years, &c. from (m) the time of the attainder only. So (n) as a sale or gift before, is good, for he must live of them. And therefore after endictement, and before attainder, the goods shall not be removed out of his house, but shall be in the keeping

(k) 30. H. 6. 5.
(l) 2 *Mar.*
(m) 8. E. 4. 4.
(n) 8. E. 4. *ib.* 7 H. 4. 47. *Br. forf. de ter.* 10.

keeping of his neighbours. **And in these & all other forfeitures,** as upon an (o) indictment of *fugam fecit*, or (p) if one be taken with the manner, upon a robbery, or (q) tarry the exigent, &c. **The town is chargeable with the goods,** and therefore (r) may seise them wheresoever they be.

(o) 5 H. 4. *forf.* 32.
(p) 3 E. 3. *cor.* 349.
(q) 22 *ass.* pl. 80.
(r) 22 *ass. ibid.*

Statutes.

31. E. 3. c 3. No man nor town shall be charged in the Exchequer, by the extract of the Justices, of the Chattels of fugitives, or felons, if they can shew that another is chargeable.

1 R. 3. c. 3. No Sheriffe, under-sheriffe, or escheator, Bayliffe of Franchises, nor any other person take or seise the goods of any person arrested or imprisoned, before that such persons, so arrested and imprisoned be convict, or arraigned of such felony, according to the Law of England: or else the same goods otherwise lawfully forfeit, upon pain to forfeit the double value of the goods so taken, to him or them that shall be thereby indamonaged, by action of debt in this behalf to be pursued.

37. H. 8. Br. *de.* 42.

The bloud also is here corrupted. So as a remainder to his right heir, can never take effect. The eldest son attainted of felony in his fathers life time, and him surviving, or his issue (a) (if he die before) cannot inherit: and besides, shall be an impediment, that the younger brother

22. H. 6. 38.
(a) 32 H. 8. *Dy.* 48.

(b) 22 H. 6. ib. (c) 32 H. 8. Dy. ibid. (d) Lit. 169. (e) 3 & 4 Ph. & Mar. Dy. 140

ther cannot, but it shall go to the Lord by eschear. Otherwise (c) it is if the eldest son die without issue in his fathers life time.

Lastly, the wife loseth (d) her dower, & notwithstanding (e) the husband alien the same before the offence committed.

Statutes.

1 E. 6. c. 12. No dower shall be forfeit, by the husbands attainder, of any murder or felony whatsoever.

Prerogative.

3 El. 3. cor. 209. 3 E. 3. cor. 289. 5 H. 4. forf. 32. (f) 2 E. 3. cor. 377. 14. E. 2. p. 19. El. Dy. 355. (g) 8 E. 3. cor. 427. (h) 26 Ass. pl. 47. (i) Stamf. 35. b. (k) 9 H. 4. i. (l) Stamf. 22 s.

Those that flie for fear of the offence (we call it a *Fugam fecit*) forfeit their Chattels. Accessaries after the Fact, that is to say, wittting maintainers (and (f) if it be of one outlawed in the same County; though they have no other notice of it) as by (g) receiving one that flyeth for it into his house, and shutting the door, so as the Countrey thinking him to be there, he escape whilst no man followeth him; ayding him with money, but not with good words, as wholsom advise, speaking or writing for his delivery. And therefore also that suffer (i) one arrested whether by themselves or any other to escape which we call a voluntary escape, are guilty of the same offence.

Pre-

Prerogative.

Concealing the offence, without discovering it unto the King, or his Counsel, or to some Magistrate, is called misprision, and that forfeiteth (a) chattels, & hereditaments during their life.

CHAP. XVI.

Of Felony.

Offences against the Crown be of two sorts, Felony, & High-treason. Felony is an offence of the Crown, not bent immediatly against the State, where the forfeiture of the offenders (b) inheritance is given to the Lord, (whether it be in petty (c) treason, or other Felony, and (d) at any time after he is attainted; And therefore the Lord may have a Writ of Escheat before execution, But (e) of lands (whereof one is seised in the right of his wife) the King shall have the issues during the husbands life.

(b) 27. E. 3. Escheat. 17
(c) 22. ass pl. 49
(d) Sta. 198. a.
(e) Sta. 190. b.

Prerogative.

The King, both (f) here, and wheresoever (g) the offendor was dispunishable of wast (as if he were seised of land in the right of his wife) is utterly to wast the inheritance, by rooting up the

(f) Sta. 190. a.
(g) Sta. 190. b.

houſes and trees, plowing up the meadow, digging up the land, &c. And this is in deteſtation of the offence.

Statutes.

Magn Ch. C. 22. The King ſhall have the land by a year and a day, and then render it to the Lord of the fee.

Prerogative, c. 15. giveth the King the profits by a year and a day, and moreover the waſting of it.

CHAP. XVII.

Of Stealth.

FElony is a bare Felony, or petty treaſon.

Stamf. 182. Bare Felony is a Felony of the loweſt nature, and is puniſhable by hanging.

This is ſimple or mixt.

Simple, as ſtealth and manſlaughter.

Stealth is the wrongful taking of goods without pretence of title. And therefore altereth not the property, as a treſpaſs doth, ſo as upon an appeal the party ſhall re-have them.

4 H. 7. 5. Statutes.

Statutes.

21 H. 8. c. 7. (made perpetual 5 El. c. 18.) The ſervant that hath any goods or chattels delivered him to keep by his maſter, and (with an intent to ſteal) doth either go away therewith, or being in ſervice, imbezle, or convert the ſame to his own uſe, ſhall be judged a thief, if the value of the goods amount to xl. s.

This extendeth not to apprentices, or any perſon within eight years of age.

Inne-keepers muſt anſwer for goods of their gueſts ſtollen: though they let them have a chamber with a key unto it, to keep their goods in. But if the gueſt ſuffer with his good will a ſtranger (whom he knoweth not) to lodge with him in the chamber, and the ſtranger rob him, the Inn-keeper ſhall not be charged. Otherwiſe it is, if he be lodged there by the Inn-keeper. 22. H. 6. 21.

Prerogative.

Goods confiſked; that is to ſay, **which the thief, attainted for ſtealing another thing,** for if it be for ſtealing the ſame goods they are ſaid to be forfeit, and not confiſked, **diſclaimeth to have any propertie, in any waifes,** that is to ſay, **which a thief** (but not one that committeth a treſpaſs) **waiveth; are the kings, if he** (whether any officer of his, or the Lord of the Franchiſe, (a) 3 E. 3. cor. 371. (b) 3 E. 3. cor. 355. (c) 12. E. 4. 5. (d) 21 E. 4. 16

seise them before the partie from whom they were stollen. But if the partie from whom they were stollen seise them first (though it be not in xx years after they be stollen) or doing his diligence to apprehend the thief which is called fresh suit; whether the thief be taken at his suit or not, convict him afterwards, upon an appeal; he shall have his goods again.

21 E. 4. *ibid.* 7. H. 4. 43.

Statutes.

21 H. 8. C. 11. The party shall have restitution of his goods without fresh suit, if he or any for him give in evidence, by reason whereof the other is attainted.

27. H. 8. 22. The stealing of goods which exceed not the value of xii. d. (called petty Larceny) is a felony, (for a man may justifie the calling of one thief for such an offence) that doth only forfeit his Chattels.

CHAP. XVIII.

Of Manslaughter.

(a) *Stamf.* 21 c. (b) *Stamf. ibid.* 3 *ass. pl.* 2.

Manslaughter is the killing of any person (a) born into the world, though he be not baptiz'd. But (b) to kill an Infant in *venter sa mere*, is no felony.

Statutes.

Statutes.

21 E 1. Stat. de male fact in parcis: It is no Felony for Forresters to kill misdoers, if they will not submit themselves.

But if one live a year after an act committed which was the cause of his death as beating, (c) poyson (d) given him, &c. **it is no felonie in him that did the Act:** but this death shall be accounted a natural death,

(c) 3. E. 3. *Coron* 303

(d) *Stam.* 21. *d.*

The killing of one by (e) **chance** (which we call by misfortune, or misadventure) **in the doing a lawful act.** But not if *A. B.* be fighting, and C. coming between to part them, be slain by either of them both without any ill intent, for that is felony at the least if not murder in him that killeth C. because the thing which they were doing was unlawful, **or in his own defence,** which we call *Se defendendo.* **flying as far as he may to save his life,** for otherwise it is felony. though the other pursue him, **doth only forfeit his Chattels,** and he must have a charter of pardon.

(e) 2 *H* 4. 18.

(f) *Stamf.* 16. *a*

(g) 4. *H.* 7. 2.

(h) 43. *ass. pl.* 3.

Statutes.

Gloceſt. c. 9. He that killeth a man by misadventure or *se defendendo*, must put himself upon the Countrey, and if he be found to have done it so, the King if he please may pardon him.

Parl. C. 25. To kill a man by misadventure shall be no murder.

But the killing of one that attempteth to rob him whether (e) upon the high-way or if (f) when men come to his house, and compasse it about to burn it (though they do not burn it) whereupon he issueth out and killeth one of them, is neither Felonie nor causeth anie forfeiture at all.

(e) 26. ass. pl. 32
(f) 26. ass. pl. 23

Prerogative.

Anie unreasonable thing killing a man. As the wheel of a mill, when one falleth from the Bridge into the water, & is carried by the violence of it under the outward wheel; the task of Corn that a man falleth from, and so receiveth his death: it, and everie thing moving with it, is forfeit to the King. As if a man being upon a Cart carrying Faggots, and binding them together, fall down by the moving of one of the horses in the Cart, and die of it: both that and all the other horses in the Cart, and the Cart it self, are forfeit. And these are called Deodands.

(a) 8. E. 2. Cor. 389.
(b) 3 E. 3. Cor. 140.
(c) 8 E. 2 cor. 397.

CHAP.

CHAP. XIX.

Of Chance-Medly.

MAnslaughter is Chance medlie or murder.

Chance-medlie is manslaughter without former malice. As if certain set upon one to kill him, and I. S. having no malice against him, and being in the company, and seeing them combating, take part suddenly, and together with the rest smite him that he die, this is chance-medly in I. S. 1 *Ma. Pl.* 100

CHAP. XX.

Of Murder.

MUrder is manslaughter upon former malice, which we call prepensed malice. As if one to kill his wife, give her (lying sick) poyson in a roasted apple: & she eating a little of it, give the rest to a little child of theirs, which the husband left he should be suspected, suffereth the child to eat, who dieth of the same poyson; this is murder though the wife recover: for the poyson ministred upon malice prepensed, to one (which by a contingency 18 *El. Pl.* 47 a

procureth the death of another, whom he meant not to kill, nor bare any malice to, shall be as great an offence, as if it had taken the effect which he meant, proceeding from a naughty and malicious intent.

3. El. Pl. 258. Felony de se. That is, **he that murdreth himself, doth onlie forfeit his Chattels**, But not his lands; neither doth it work corruption of bloud, nor loseth the wives dower, because it is no attainder indeed: But his Chartels he doth forfeit, real and personal goods, debts, &c. And this forfeit shall have relation to the time of the act in his life, which was the cause of his death So as husband and wife being possessed joyntly of a term for years of land, and the husband drowning himself, the term is forfeit to the King, and the wife surviving shall not have it: for the Kings title is from the casting of himself into the water, which was before the wife had any title by survivor.

And this forfeiture is as strong to give away the term as an expres grant, which the husband might have done and barred his wife.

CHAP.

CHAP. XXI.

Of Robbery.

MArt, is that kind of bare Felony which riseth from the former.

Whereof there be two sorts, Robbery and Burglary

Robbery is stealth from ones person by assault in the high way. But if either nothing (a) be taken, though he command him to deliver his purse or money, or mony taken, but (b) without putting the person in fear by assault and violence (as where one is indited *Quod vi & armis, apud B. in via regia ibidem xl s. de pecuniis numeratis, &c. felon ce cepit de persona I.S.*) it is no Robbery. And therefore in this latter case he may have his Clergy at this day.

(a) 9.E.4.26.

(b) 5.el.dy.224

CHAP. XXII.

Of Burglary.

BUrglary is the night-breaking of an house, with an (a) intent to steal or kill; though none be killed, nor any thing stollen, And so it is of a (b) stable, parcel of a house, but (c) not of breaking ones close to kill him, nor ones house, if it be but to beat him, nor though it be to kill him, if it be in the day time.

(a) 1. E.6. Br. Corrone. 179.

(b) 1.E.6. ibid.

(c) 13.H.4.7.

(d) Stamf. 30.b.

CHAP.

CHAP. XXIII.

Of petty Treason, properly so called.

AND of bare Felonies so much shall suffice. Petty Treason is a Felony, (c) For where one is arraigned for falsifying the Kings Seale, (which is a petty Treason) a charter of pardon of all Felonies is a good plea, of higher nature then bare Felony is; the punishment whereof is burning. This is against mortal creatures, or against God.

(c) 1 E. 3. 14.

(f) 1 R. 2. 4. F. N. B. 269. b.

Against mortal creatures, as Petty treason (properly so called) and Sodomitrie. Petty treason (properly so called) is the killing of any to whom private obedience is due: as ones maister, mistress husband, &c. for which instead of burning, (which the woman here shall be) a man shall be hanged and drawn.

(a) 22 ass. pl. 49 21 E. 3. 17. Cor. 477.

(b) 12 ass. pl. 30. 19 H. 6. 14. his masters wife

(c) 1 R. 3. 4.

(d) 12 ass. pl. 30 1 R. 3. 4.

(e) 21. E 3. ib. 19. H. 6. ib.

CHAP.

CHAP. XXIIII.

Of Sodomitry.

SOdomitry is a carnal copulation against nature, to wit, of man or woman in the same sex, or of either of them with beasts.

F.N.B. 269. b. they shall be burnt, and that by the Common Law.

CHAP. XXV.

Of Heresie.

AGainst God, is that which immediately is bent against his Majesty, as Heresie, and Sorcery. Heresie is a presumptuous oppugning of an Article of Faith: whereof what it is, the Common Law taketh no notice, But in case of Heresie, the party before he can be burnt, must be convict in a Provincial Sinode; and after abjuration, make a relapse into the same or some other Heresie.

(f) Lect. Frow. No Sanctuary lieth in case of heresie, for it is treason against God.

(g) F.N.B. 269 b. Sorcerers and Sorceresses, and Heretick shall be burnt, and that by the common Law. F.N.B. 269. b

CHAP.

CHAP. XXVI.

Of Sorcery.

F.N.B. 269. b. 45. E. 3. 17. SOrcerie is a consulting with Divels, and containeth under it Conjuring, Nigromancie, and such like.

CHAP. XXVII.

Of Petty Treason growing by Prerogative.

(a) 26. ass. pl. 63 (b) 3. H. 7. 10. (c) 1. E. 3. 24. HEre divers offences are accounted Felony, in respect of the Kings Prerogative, as to counterfeit the Kings coyne, great Seale or Privy Seal; to acknowledge any forreign person to have any power within the Realme. As (d) by pleading an Excommunication under the Popes Bull, and are punishable as Petite Treason.

(d) 30. ass. pl. 19

CHAP.

CHAP. XXVIII.

Of High Treason.

HIgh Treason followeth, which is an offence of the Crown, directly against the State. As imcompassing the death of the King: For intending his death (without more) is Treason; otherwise it is in felony, except an act be done, or the Queen his wife, or of his Son and Heir, by levying war within the Realm, or adhearing to his Enemies: or them comforting, aiding, &c. and is punishable by drawing hanging and quartering in a man, drawing and hanging in a woman.

(c) 25. E. 3. c. 2. maketh a declaration of all these to be high Treason.

(f) 13. H. 8. 12.

1. H. 7. 24. *Stamf.* 1. 82 c.

Statutes.

25. E. 3. de prodictionibus cap. 2. It is made high treason to kill the Chancellor, Treasurer, or Justice of either Bench.

Justices of Eire, or of assizes, or any other Justices assigned to hear and determine in their place, doing their office.

To counterfeit the Kings mony.

To bring false coyn into this Realm, counterfeit according to the mony of England (knowing the same mony to be false) to merchandise, or make payment with it.

To counterfeit the Kings great Seal, or Privy Seal.

1. Mar. c. 6. Seal manuel, Privy Signer, or Privy Seal.

Strange coyn currant in this Realm.

1. & 2. Ph. & Ma. cap. 11. To bring wittingly false forreign coyne hither, to the intent to utter it within the Realm.

1. El. c. 11. To clip, wash, round, or file, any mony of this Realm, or current here: and causeth forfeiture of land for life only. But no dower shall be forfeited, nor blood corrupted.

18. El. cap. 1. To Impaire, Diminish, Falsifie, Scale, or Lighten any mony by any art, ways or means whatsoever.

1. Eliz. c. 1. Advisedly, Maliciously, and directly to affirm, set forth, and defend the third time by expresse deed or act, or to put in ure, or to execute any thing, for the defence or setting forth of the spiritual authority or jurisdiction of any forraign person, heretofore claimed or used in any of the Queens Dominions.

So for any person compellable to take the Oath.

To refuse (after lawfull tender) the oath to acknowledge the Queen supreame governor in all causes within her dominions.

13. El. c. 1. To put in ure any bull or instrument of absolution, or reconciliation from Rome, or to take upon one (by colour

color of any ſuch to abſolve or reconcile any perſon, or to publiſh any ſuch Bull or inſtrument. To receive ſuch abſolution, or to procure, abet, or counſel any offendor to uphold him. To practiſe to abſolve, perſwade, or withdraw any perſon within the Queens dominions, from their natural obedience, or (for that intent) from the Religion now eſtabliſhed here, to the Romiſh Religion, or to move them to promiſe obedience to the See of Rome, or other Eſtate, or willingly to be abſolved, withdrawn, or to promiſe ſuch obedience.

1. Eliz. cap. 6. Malicioufly, directly, and adviſedly, to ſay or hold opinion (the ſecond time) that the Queens Majeſty, or her heirs of her bodie, be not right Kings and Queens of this Realm, or that any other perſon ought to be.

Their abbettors, procurers, counſellors, aydors, &c. To affirm by any writing, printing deed, or act, the firſt time, their abbettors, &c.

33. H. 8. c. 20. Attainder of high treaſon by the courſe of the common law, or ſtatutes of this Realm, ſhall be of as great force as an attainder by Parliament. And the King ſhall have the real poſſeſſion of every thing forfeited without inquiſition, or office: ſaving to Strangers, &c.

29 Eliz. cap. 2. No attainder of high treaſon (for which the party is once executed

cured) shall be impeached for any error, by the heirs, or any claiming under them.

26. H. 8. c. 13. & 5. & 6. E. 6. cap. 11. Any offence (made treason heretofore) done out of the limits of the Realm, shall be inquired here by Commission, and like process used, as if it had been done within the realm.

One resiant out of the limits of the realm, may be out-lawed for high treason.

An estate taile shall be forfeit for High-treason.

The

The fourth Book of Lavv.

CHAP. I.

Of Courts.

Hauing (we haue gone through both the parts of Law, there remaineth yet one generall and common affection scattered throughout the whole Law (as the blood is through the body) which we call an Action.

Action is the handling of a cause in controuersie before certain Judges, who (in respect of the place where they are set to do Justice) are commonly called a Court.

Statutes.

36. Edw. 3. cap. 15. All Pleas which be pleaded in any of the Kings Courts, before any of his Justices, or in his other places, or before any of his other ministers, or in the Courts and places of any other Lords within the Realm, shall be pleaded, shewed and defended, answered, debated and judged in the English Tongue, and that they be entred and inrolled in Latine.

Of all apparent faults proceeding from the Action, As in false Latine (*a*) or default of form in the Writ, insufficiency in an office or Inditement, mis-awarding of Proces, (as if of an exigent where no exigent lieth) impossibility in the Plea, as in account, supposing him to be his Receiver for seven years, and the Defendant pleads fully accounted such a day which is the first of those seven years; **The Court must take notice**. To abate the Writ, award a *Supersedias* upon those offices, Inditements, or Proces, to stay Judgement if the Defendants Plea bee found against him, &c. though the party except not to it. And therefore although hee that casteth an Essoyne cannot plead in abatement in the Writ by way of Plea; yet if it be a matter apparent to the Court (as *Henricus*, or, *Dux Hiberniæ*, where it should bee *Dominus*) hee and every other stranger, as *amicus curiæ*, may.

(*a*) 4. H. 6. 16. 5. E. 4 7. 7. H. 6. 5. 4. H. 6. 16.

may. And the Court is bound to abate it *ex officio*, though the Tenant or Defendant make default.

Every Court hath power to award forth Precepts. And if the Precept bee not ſerved, another of the like nature ſhall go forth till it bee ſerved. Therefore the ſecond Proceſs is called a Summons (or Attachment, as the firſt Proceſs was) *ſecundo alias*, the third a *Pluries*, the fourth, and all the reſt, *Plus pluries*. 14.H.6.20. *In a Summons ad Warrantizandum* F.N.B. 75. *In a Replevin.*

To every Court doe belong both Clerks and Officers.

A Clerk is hee that ſerveth for things to bee done in Court, as entering the Pleas, and ſuch like.

Any error that appeareth to the Court to be the Clerks (miſpriſion) **miſtaking, may bee amended at any time.** As a good original Writ or Precept ill entred in the Roll. A Writ againſt A. and B. and the whole Proceſs continued againſt B. and C. nor A. and B. a *Scire facias* out of a fine and parcel of the land omitted. 7.H.6.45. 44.C.3.18. 20.E.47.

Statutes.

14. E. 3. **cap. 6.** No Proceſs ſhall bee annulled or diſcontinued by the Clerks miſtaking in writing one ſyllable or one letter too little, or too much; but ſhall ſpeedily be amended, without any advantage to the other.

9 H. 5. cap. 4. made perpetual.

4 H. 6. cap. 3. The Justices before such Pleas or Records bee made, or shall bee depending by adjournment, errors, or otherwise, may make such amendment as well after judgement as before.

4 H. 6. cap. 3. The former Statutes shall not extend to Records and Process, whereby any person shall bee out-lawed.

8 H. 6. cap. 12. No Judgement or Record shall bee reversed or adnulled for error, assigned in rasing or interlining, adding, substracting, or diminishing of words, letters, titles, or parcel of Letters in any Record, Process, or warrant of Atturney, original Writ, or judicial Pannel, or Return, though to the Judges of the Courts wherein the said Records and Process bee certifyed (by Writ of Error, or otherwise) the same appear suspected. But the Kings Judges of the Courts where the said Records and Process bee certified by Writ of Error, or otherwise, shall examine the same by themselves and their Clerks, and amend therein (in affirmance of the first Judgement) all that seemeth to them to bee the Clerks misprision: Except Appeals, Indictments of Treason, and of Felonies, and the Outlawries of the same. And the substance of

the

the proper names, syr-names, and additions, left out in original Writs of Exigend, and other Writs containing Proclamation. And if any Record, Proceſs, Writ, Warrant of Attumey, Return, or Pannel, to bee certified defective, otherwiſe than according to the writing which thereof remaineth in the Treaſury, Courts, or places from whence they bee certified; the parties in affirmance of the Judgements of ſuch Records or Proceſs, ſhall have advantage to alledge variance betwixt the ſame Writing and the Certificate: which being found and certified, the ſame variance ſhall bee by the ſaid Judges amended, according to the firſt writing.

27 Eliz. cap. 7. After Demurrers joyned and entred, the ſame Court may amend all imperfections, defects, and wants of form, other than thoſe onely which the party demurring ſhall particularly expreſs with his Demurrer.

Officers are thoſe which are to ſerve the Courts Precepts, and where the Precept ſo requireth, **to certifie the Court thereof**, which wee call a Return.

So upon a Writ to inquire of damages, it is a good Return that the Inqueſt gave no damages. For hee returneth what they did. 44 E. 3. 3.

But upon a *Capias* returned *Cepi corpus*, he ſhall be amerced if he have it not there: as 44 E. 3. 2.

the day. For the Writ is, *Capias ita quod corpus ejus habere possis, &c. tali die, &c.*

Statutes.

Westmin. 2. Cap. 39. Damages given against the Sheriffe if hee return not at all, or return a tardy, upon Writs delivered or offered to bee delivered him by Billet. So upon returning *Mandavi Ballivo libertatis* falsely: upon resistance of any Great man to execute the Kings Precept, the Sheriffe shall take the *Posse Comitatus*, and see it served.

Stat. Ebozac. 12. E. 2. Ca. 5. Bayliffs of Franchises must deliver their returns of the Writs to the Sheriffe by Indenture, and if hee change the Return, the Lord of the Liberty, and the party, shall recover double damages.

The Sheriffe, &c. must set his proper name to all Returns.

27. Eliz. c. 12. Every Under Sheriffe, Bailiffe of Franchise, Deputy or Clerk of the Sheriffe, &c. must take an oath for the Supremacy, and for the true, speedy, and indifferent returning of Writs, and impanelling of Jurors, without taking above the Fees allowed.

29 Eliz. cap. 4. Sheriffes may take for the serving of any Extent or Execution on-

ly

ly 12 d. of, and for every 20 s. where the summe exceedeth not C. l. and 6 d. of and for every 20 s. being above an C. l. that they shall levy it, or extend and deliver in execution, or take the body in execution for.

Courts are Courts of Record, & Court Barons. For against a recovery pleaded in ancient Demesn, or other Court Baron, one shall not say, *nul tiel Record*, for it is no Record, but *nul tiel Recoverie*, and it shall be tried by the Country. Otherwise it is in the Kings Courts. 9. E. 4. 42.

Of Records, which are the Kings Courts, as he is King. Otherwise, if the King have a Court as Lord of a Mannour, that is but a Court Baron. **And these have that credit, that no averment can be taken against any thing there entred or done.** And therefore work an Estoppel to the parties in like sort, as Indentures did before. As upon a Lease made by fine, both parties are estopped to say the Lessor had nothing in the land. 9. E. 4. ibid. 15. El. Pl. 434. 21. H 9. 24. 5. E. 4. 1.

So of Pleas in Bar, Replications, Returns of the Sheriffe, &c.

Statutes.

1 E. 3. Cap. 4. Statut. 1. Averment given in a Writ of false Judgement against the Record certifyed.

Things also that cannot bee granted but by Deed, pass here, and that more strongly, by matter of Record.

38 *Eliz. ploy.* 483. **The King taketh Hereditaments,** though it bee but for years. Otherwise it is of an Obligation of Chattel personal,

31 *H.* 7. 19. 39 *H.* 6. 26. *Stamf. prær.* 56. **by matter of Record only:** for to personal and transitory things, as *Catalla felonum & fugitivorum*, wreck of Sea, treasure trove, and the profits of land of persons out-lawed in a personal Action, &c. the King is intituled without office or other matter of

3 *Eliz. ploy.* 289. Record; but to take a Free-hold by a Condition broken, or purchase of his Villeine, or such like, hee cannot without office or matter of Record. Otherwise it is, where the Law casts a Free-hold upon him, as in a

3 *Eliz. ploy.* 229. gift in Tail, the remainder to the King.

5 *E.* 4 7. And therefore also the King taketh a Free-hold without livery or seisin by deed inrolled: but cannot be infeoffed by Deed, without inrollment of Record, for that no Livery can be made unto him.

Lit. 39. **Villenage beginneth only by confessing a mans self to be one in a Court of Record.** And therefore in a *Præcipe quod reddat*,

41 *E.* 3 *Villen* 6 if the Tenant say, That hee is a Villeine to *I. S.* and holds the Land in Villenage, the demandant saith that is frank, &c. and hee is found frank by the Jury: yet hee remaineth a Villeine to *I. S.*

Duties

Duties of the Testator growing by Record, must be answered by Executors before other duties. 21 E. 4. 11.

Courts of Record are the Parliament, & Courts that have ordinary Jurisdiction. For the Parliament, when it is sitting, may take a Recognisance, and do such other things as to a Court of Record appertaineth. 1 H. 7. 20. *the higher house.* Br. Recogn. 8. *the lower house.*

The Parliament is a Court of the King, Nobility, and Commons assembled, having an absolute power in all causes. As to make Laws, to adjudge matters in Law, to try causes of life and death, to reverse errors in the Kings Bench, especially where any common mischief is, that by the ordinary course of Law, there is no means to remedy; this is the proper Court for it. And all their Decrees are as Judgements. And if the Parliament it self do erre (as it may) it can no where bee reversed but in Parliament. 23 El. Dyer. 375. 1 H. 7. 19. 37 Ass. pl. 17. 21 E. 3. 46. Br. Parliament. 16.

Statutes.

4. E. 3. Cap. 14. & 36. E. 3. Cap 10. A Parliament shall bee holden once every year.

1. H. 4. Cap. 14. No appeal shall bee issued in Parliament.

Prerogative.

Prerogative.

Statutes of restraint binde not unlesse they contein the Common-wealth, or bee specially named. In the Statute Westmin. 2. which altereth Fee-simple Conditionall, into an estate Taile, that Tenant in Taile shall have no power to alien, doth binde him: for it is for the Common-wealth. So as Lands being given to the King in Taile, the Remainder over, if the K. have issue who alieneth, and dieth without issue; hee in the Remainder may enter. But if by Statute one bee attainted, and his Lands forfeit, with a proviso that of such Lands as hee was seised to the use of any other *cesty qui use* may enter; that bindeth not the King that *cesty qui use* should enter upon him, for it is not for the Common-wealth. But the Statute of 1. *H.* 5. *cap.* 5. that in Endictments addition must bee given to the party indicted, bindeth the King in that case because Endictments are especially named.

He may licence things forbidden by the Statutes. As to coyn money which is made Felony by the Statute, and was before lawful, for that is but *malum prohibitum* But *malum in se*, as to levy a Nusance in the High way, hee cannot licence to do: but when it is done hee may pardon it. **But where the Statute saith his Licence shall bee void, there it must have a clause** *non*

ante

obstante, that is to say, **this clause (notwithstanding any Statute)** else it is not good. By the Statute 23 *H.* 6. *cap.* 18. is, That the Kings Grant to bee Sheriff of any County, longer than a year, shall bee void, notwithstanding that the clause of *Non obstante* bee in the Patent; yet with a clause of *Non obstante*, such a Grant is good, and not without it. But neither without, nor by that clause hee can dispence with a Statute before it bee made. And therefore a Licence to carry Bell-mettal out of the Realm (notwithstanding any Statute made or to bee made) is not good, if a Statute bee made after that to prohibit it. For hee cannot dispence with an Act of Parliament before it bee made.

Courts of Record which have an ordinary Jurisdiction, are either generall, whose Jurisdiction extends throughout the Realm, or but within some County: Wherefore these latter, for their order and course of proceeding, do in all things fashion themselves to the example of those higher Courts, as of the Parents from whom they come. 34 *H.* 6. 41.

The former are those that are holden in Terme time onely; the whole year having four Termes, Michaelmas, and Hilary Terme, Easter and Trinity Terme, and every Terme severall dayes of Returns. If either the Return day, or first or last day of Terme fall upon the Lords

Lords day, then the day following is taken instead of it.

Michaelmas Term (beginning the 16. of October, and ending the 28. of November) hath 8 returns, *Octabis Michaelis* that is the 8 day after the feast of Saint Michael. *Quindena Michael*, that is the 15. day after. *Tres Michael*, that is at the end of 3 weeks after. *Menſe Michael*, that is at the end of a month after. *Chraſtino animarum*, that is the next day after. *Chraſtino Martini. Octab. Martini, Quindena Martin.*

Hillary Term beginning the 23. day of January, and ending the 12. of February, hath four returns: *Octabis Hillarii, Quindena Hillarii, Chraſtino purificationis, Octabis purif.*

Easter Term beginning 17. daies after Easter, and ending the Monday next after Aſſention-day, hath five returns. *Quindena paſchæ, Tres paſchæ, Menſe paſchæ, Quinq; paſchæ*, that is five weeks after *Chraſtino Aſſentionis.*

Trinity Term beginneth 12. daies after Whitſunday, and continuing 19. daies, hath five returns, *Octab. Trinitat. Quindena trinitat, Chraſtino Johannis Baptiſtæ, Octab. Johannis Baptiſtæ, quindena Johannis Baptiſtæ.*

Statutes.

32. H. 8. cap. 21. Trinity Term ſhall begin the Monday after Trinity Sunday, for keeping of Eſſoynes, profers, returns, &c.

The

The full Term shall begin the Friday after *Corpus Christi* day. And have four returns onely, *Chrastino Trinitatis*, *Octabis Trinitat'*: *quindena Trinitatis*, *Tres Trinitatis*. The rest are cut off.

To these Courts belongeth the power of sending forth writs.

A writ is a Latin letter of the Kings, from thence in Parchment sealed with his Seal.

All writs have a salutation, *Rex* to such a one *salutem*, And a conclusion expressing the name of one which is witness to the Writ, called *Teste* (who in writs out of the Chauncery is the King himself: in other writs the chief Justice of the place) the place, as *apud Westmonastarium*, *&c.* and the time, both day and year of the making of it, if it be returnable, the day of the return is also appointed in it.

The third writ (which is the *Pluries*) not served, is a contempt, whereupon an Attachment lieth. 2 *E.* 4. 1.

And therefore the third writ hath alwaies this clause in it, *Vel causam nobis significes.* So may the second which is the *Alias* also have, if the Plaintiff will. *Fitz. Nat. Br.* 68. *Fitz. Nat. Br. ibid.*

The Officer of these higher Courts is the Sheriff to whom is committed the custody of the County. 2 *H.* 6. 7.

For matters spiritual, as certifying excommengement, and such like, the Ordinary is their Officer. 7 *E.* 4. 14.

And

And to the Sheriff the writ must bee directed, though it bee for a thing done in a franchise, and hee shall send to a Bailiff of the franchise: who shall serve it as a servant to the Sheriff, and the Sheriff return it.

2 H. 6. *ibid.* And though the Sheriff serve an exception in a Franchise, yet it is good. And the Lord of the Franchise is driven to his action upon the case against the Sheriff, for the Sheriff is immediate Officer.

2 H. 6. *ibid.* But in a place excepted out of every County (as the Pallace of Westminster is) it shall bee directed to the Guardian of the Pallace, for hee is immediate Officer to the Court, and in the nature of a Sheriff.

7 E. 4. 14. 8 H. 6 3. 12 E. 4. 15. So Certificates of excommengement, and such like must bee made by the Ordinary, not by the Commissary, Archdeacon, or any other, though hee have an immediate Jurisdiction, unless hee were specially admitted an Officer to the Court.

These general Courts, are the Chancery and two Benches: the Kings Bench, and Common-place.

Chancery which beside that it dealeth with matters of Conscience, and moderating the strictness of the Common Law by an absolute power, **dealeth** also in ordinary course of Law in divers cases especially, in **suits concerning the King**, as Petitions, *Scire facias*, to repeal his Patents, &c. and so

it is a Court of Law and of Record: that the Judge is the Chancellor, having the custody of the Great Seal of England, under which pass all writs out of the Chancery with *Teste meipso*, and also the Kings Grants, being therefore called Letters Patents, Though it bee of things which hee hath in his natural capacity, as by descent from his mother, &c. and are entred of Record in this Court. 4 *Et. Pl.* 213. *Br. Courts fol.* 108.

Statutes.

1 E. 6. cap. 1. The Kings Letters Patents must bear date the day of the delivery of the Warrant to the Chancellor, and not before, otherwise they are void.

3 E. 6. cap. 4. Every one that hath any interest in any Land or office by, or under Authority of the Kings Letters Patents (made after the fourth day of *February*, 27 H. 8.) may make his title avowry Plea, &c. as well against the King as any other by an Exemplification (or constat) under the Great Seal.

13 Eliz. cap. 6. So of the Patentees of King *Henry*, 8 E. 6. Queen *Mary*, *Philip* and *Mary*, and her Majesty that now is, and all claiming under them.

Such Grants are effectual to pass a freehold from the King without any livery 38 *H.* 8. *Br. Patents* 101.

ry of Heftin. And therefore his letters patents being Tenant in Tail make no discontinuance. And being matters of record, which being no lyverie, they take effect from the time of the date. Therefore the Kings Charter of pardon shall bee pleaded without shewing when it was delivered, because being a matter of Record, it shall have relation to the date, and not to the livery. Otherwise it is of a deed.

37 H. 6. 21.

Sta. 5. El. ca. 18. In default of a Chancellor, the Lord Keeper of the great Seal hath his authority.

The Keeper (or Master) of the Rolls, is an assistant to this Court.

In the Kings Bench and Common place, the Judges are one chief Justice and three (or sometimes more) other Justices. The *teste* of their writs is, *teste Johanne Popham* (the chief Justice, &c.)

10 El. plow. 320. The Kings Bench is that which dealeth properly with Pleas of the Crown, both hearing and determining them.

10 Eli. ibid. The Common place which dealeth properly with common Pleas, such are those termed which concern possessions.

Prerogative.

10 Eliz. ibid. The King hath a proper Court of this kinde, for all things touching his revenues, called the Exchequer.

The Judges whereof are called Barons, or housebands for the Kings Revenue;

nues being one chief Baron and three other. And this also hath a Court of Chancery before the Chancellor and Barons of the Exchequer, called the Exchequer chamber.

The Escheator here is a special officer, and hath a kind of Court for finding out the Kings title to Lands, Tenements, or other things. 4 E. 2. 34. He may take inquisitions vir tute officii.

Statutes.

14 E. 3 cap. 8. No Escheator shall tarry in his office above a year.

These are the Courts whose jurisdiction extends throughout the Realm.

Those which deal but within some County, are the Sheriff in his turn, and the Coroners.

The Sheriffs turn is a Court of record for offences, which are comon grievances, as robbery, (a) bloodshed, clipping, and melting of silver and gold, night-walking, the not repairing or making clean of a bridge or a ditch; (b) fraies, and assaults, &c. But not (c) murder, or breaking of ones hedge, &c. for they are no comon grievances, but a wrong to one singular person. F.N.B 82. (a) 22 E. 4. 22 (b) 10 H. 6 7. (c) 22 E. 4. ib.

Whereunto every man of the age of 12 years and upwards (being within the precinct) oweth suit, and must be sworn to the Kings Allegiance. And this is called a suit real, being not due by reason of mens freeholds, but of their body, because they are resiant within the precinct of the Leet. But women are not compellable to come thither, F.N.B. 161. Brit. per Br. leet 39. 12 H. 7. 18. 25 E 3 23. Brit. per Br. ibid.

not to be sworn to the King. And therefore when a woman is outlawed, shee is said to bee waved and not outlawed, because shee is never sworn to the Law.

F.N.B. ibid.

Stat. Marl. c. 16 so reciteth it.

Peers of the Realm are exempted: And persons of Churches, and other men of Religion, as appeareth before.

2 H. 4. 24. 8 R. 2. avowry. 194.

The offendor here shall bee amerced, and distreined for that amercement, throughout the whole precinct of the County.

Statutes.

Magn. Chart. 35. The Sheriff shall make his turn throughout the Hundred but twice a year, that is to say, once after Easter, and again after Michaelmas. And the view of Frankpledge shall bee made at the turn of Michaelmas.

31 E. 3. cap. 14. Stat. 1. The turn must bee yearly, once within a moneth after Easter, and another time within a moneth after Michaelmas; if they hold them in another manner, they shall lose their turn for the time.

1 E. 3. cap. 17. Endictments in Sheriffs Turns must bee by Rolls indented, one part to remain with the Endenters, the other with the Sheriff.

1 E. 4. cap. 2. Upon Endictments and Presentments taken before Sheriffs, or their ministers at their turns, or Lawdayes, they shall not attach, arrest, or imprison nor levy any Fine, or Amerciament of any person so indicted (or presented) but shall deliver

deliver the ſame Indictments or preſentments to the Juſtices of Peace of the ſame County, at their next Seſſions, who ſhall proceed thereupon, as if they were taken before them.

1 Mic. 3. cap. 4. None ſhall bee returned upon pannel of inquiry of the Sheriffes time, but men of good name and fame, having within the ſame Freehold Land to the yearly value of 20 s. or Copy land to the yearly value of 26 s. 8 d. and every Indictment otherwiſe taken ſhall bee void.

The Coroners Court, is a Court for matters of the Crown. Battery, Mayme, Rape, Murder, &c. *Stam. 52.*

Statutes.

Weſtm. 1. cap. 10. Coroners ſhall bee choſen in all Counties, of the wiſeſt and ſufficienteſt Knights.

12 E. 3. cap. 7. That no Coroner ſhall boe choſen, unleſs hee have land in Fee ſufficient in the ſame County, whereof hee may anſwer to all manner of people.

28 E. 3. cap. 6. All Coroners of the County ſhall bee choſen in the full Counties, by the Commons of the ſame Counties, of the moſt convenient and moſt lawful people that ſhall bee found in the ſame Counties to do the office. Saved alwayes to the King, and other Lords which owe to make ſuch Coroners, their Seigniories, and Franchiſes.

Weſtm. 1. cap. 10. The Sheriffs ſhal have

Controrols with the Coroners, as well of their Appeals, as of Inquests of Amerciaments, and of other things which to the office doth belong.

Westm. 1. cap. 10. Coroners must take nothing for doing their office.)

14 H. 7. 31. 4 H. 7. 3. **Upon iust cause of exception to the Sheriff, process out of the higher Courts shall be directed to the Coroners.**

Prerogative.

Diu. of courts f. 102. **The Steward and Marshal of the Kings house, have a Court, for all personal actions, and pleas of the Crown, arising there.** As debt, covenant, trespas, &c. and by the common law, they might hold plea of Freehold it self, as it seemeth by the Statute of *Artic. super Chartas cap. 3.* which saith, from henceforth they shall not hold plea of Freehold. Also they may inquire of treason, murder, felony, manslaughter, bloodshed, &c. and take appeals of all kinds of Felony and Maim.

Diu. of courts f. 102. Stamf. 57. a.

Statutes.

Artic. super Chart. cap. 3. They shall not hold plea of any contracts and covenants but such as one of the Kings house maketh with another of the same house. Nor of any trespas, unless the party were attached, and the plea determined before the Kings departure from the place where the trespas was committed.

any thing attempted here against it, is void.

Pleas of felony (that cannot bee determined before the Steward) because the felons cannot bee attached, or for other like cause) shall bee referred to the common law.

1 E. 3. 2. and 10 E. 3. ca. 2. Inquests shall be taken there by men of the County about, and by no men of the Kings house, except it bee in covenants, contracts, and trespasses, when either party is of the Kings house.

5 H. 6. cap. 1. The Defendants may aver that themselves or the Plaintiff (at the time of the suit commenced) were not of the Kings house against the Record.

33 Ed. 1. cap. 3. The jurisdiction shall not reach above 12 miles about the K. house.

33 H. 8. cap. 12. The Lord Steward of the Kings house alone, and (in his absence) the Treasurer and Comptroler of the K. house, with the Steward of the Marshalsy, or two of them (whereof the Steward of the Marshally to bee one) may without commission hear and determine all treasons, misprisions of treasons, murders, manslaughters, and bloodshed, within the K. house, although the King bee removed before. The enquiring and verdict must bee by the Kings household servants in the Check Roll.

No Clergy, nor sanctuary, to any that is found guilty before them.

By reason also of certain Franchises, grow two other Courts of Records, which deal within some certain precinct: a Leet and Court of Pipowders.

Fit.N.B.82.
23 E 3.22.
32 E.4.22.

A Leet is a Court of Record, having the same Jurisdiction within an hundred only, or some less Precinct, which the Sheriffs turn hath in the County, the profit of it, being to a common person. Therefore it (a) dealeth with offences that are common grievances. And (b) all (the Peers of the Realm) owe suit unto it, and must bee sworn to the Kings Allegiance. And the (c) offendor for an Amerciament shall bee distreined throughout the Precinct of the Leet. And that as well out of the Land holden of the Lord of the Leet (where the offence was done) as within it. The Sheriffs turn as an Overseer of this Court, is to (d) enquire whether the Tything bee whole or no: to (e) present defaults that are not redressed in the Leet: And if (for misuser or other cause) the Leet bee seised into the Kings hands, all the people shall come to the Sheriffs turn. But (f) otherwise the Sheriff in his turn hath no power to enquire of an offence done within the Leet.

(a) 22 E. 4.22
(b) F.N.B.161 Brit.c.Br.leet 39.
(c) 2 H.4.24. 8 R. 2 Avowry 194.
(d) 31 H.6 leet 11.
(e) 12 H.7.18.
(f) 29 E.3.21. Avowry 247.

A Court of pipowders is a Court of record (ff) incident (g) to Fairs and Markets: but by (h) custome, a Court of Pipowders may bee held, out of Fair or Market; for all actions arising there, by reason of any Contract, Covenant, Trespass, Debt, &c. (i) And the suit must at the same time bee commenced.

(ff) 6 E.4.3. 7 E.4.23. A writ of Error lieth there, and not a writ of false judg.
(g) Stat. 17 E.4 ca.2. so reciteth it.
(h) 13 E.4.8. ib.
(i) 4 M.Dy.133.

Statutes

Statutes.

17 E. 4. cap. 2. made perpetual, 1 H. 3. cap. 6. No Plea shall bee holden in Court of Pipowders, unless the Plaintiff or his Attorney swear, that the matter of Declaration was done in time of the same Fair, and within jurisdiction thereof, but that Oath shall bee no conclusion to the Defendant, but that hee may plead as hee might before. Every Steward, &c. holding Plea contrary, forfeiteth C. s.

The King (by Commission under his Letters patents) but not by writ, may erect other Courts at his pleasure. 42 *Ass pl.* 12.

Such were Justices of Eyre, and such Courts of Record in Corporations, and other places, by special Charters.

The Kings Councel also is a Court, to deal with the punishment of Contempts, and called the Star-chamber. But this is no Court of Law.

Statutes.

3 H. 7. cap. 1. The Chancellor, Treasurer, and Privy Seal, or two of them (calling unto them a Lord Temporal, and another spiritual of the Kings Councel, and the two chief Judges) may examine Ryots, Maintenances, &c.

These are the courts of Record. A court Baron is the court of a common person, and is for personal accounts under the value of 40 s. For a Trespass lyeth not in a *F.N.B.* 239 *p.* *Br. jurisd.* 99. *F.N.B.* 139 *s.*

Court baron of damages above 40 s. And a Superſedias lyeth to the Sheriff, upon diuers plaints in the County Court, every one vnder 40 s. when all are for one entire debt of 40 s. Or upon an Action of Covenant brought there to the damage of above 40 s.

Br. leet 32. **Theis cannot be kept oftner than every three weeks.** But ſo it bee not oftner than from three weeks to three weeks, it may bee holden as often as the Lord will. And therefore to hold off one by doing ſuit at his Court of D. at Mich., and at Eaſter, it is to bee intended at his Court Baron; for though a Court Baron bee commonly holden from three weeks to three weeks; yet ſuit of Court may bee once, twice, or thrice a year, as it is firſt reſerved.

21 E. 4. 5.

16 H. 7. 14. **The proceſs here is by precept to the Bailiff,** good enough, though it bee but by word: In as much as the trial in a Court Baron is all by the Country, and not by Record: for all is but *mater enfait*.

6 E. 4. 3. **The ſuitors are the Judges,** both in an hundred Court, County Court, or Court Baron, and the Bailiff and Sheriff are but miniſters.

F. N. B. 82. **A Court Baron is the Lords, or the County Court. The Lords is either of a particular Mannor, or of a whole hundred.** For a Court Baron is incident to every (*a*) Manner, and to every (*b*) Hundred.

(*a*) 34. H. 6. 49.
(*b*) 13 H. 7. 19.
12 H. 7. 17. **The hundred Court is that whereunto all the inhabitants within the hundred owe ſuit,** by reaſon of their Tenements. And is in effect

effect but a Court Baron.

The County Court, which is incident to the Sheriff. For the Sheriff hath two Courts by the common law, for government of the Shire: his County Court (wherein one shall have remedy against another for any matter between them) and the Sheriffs turn. But the pleas holden before him in the County Court are not of Record, though it be by writ of Justices. 12 H.7.18. F.N.B.82.

CHAP. 2.

Of Writs Original.

Of an Action there bee two parts, **Suit and Judgement.** 10 El. Dyer 268. 5 El. Dy. 220.

Suit is the parties dealing in the Action: And therefore all that while it is said to depend in Plea, but not after Judgement. The party that bringeth the Action, is called Plaintiff in a personal Action, Demandant in a real; he against whom it is brought, Defendant in the first, Tenant in other: **who for their help are allowed counsel learned in the Law.**

Statutes.

Westm.1. cap.25. No Minister of the King may maintaine another in any Action

action in the Kings Court to have part of the thing, or other profit by Covenant upon pain of punishment at the Kings will.

Westm. 1. cap. 49. None of the Kings officers shall take or purchase, or bargain for Land, Tenement, or Advowson whilest the thing is in plea, upon pain to bee punished at the Kings pleasure, as well the Purchaser as the other.

Artic. super chart. cap. 11. Neither the Kings officer, nor any other shall do so upon pain of forfeiting to the King so much of his Lands as amounteth in value to that hee purchaseth. Any may sue for the King before the Justices, before whom the Plea hangeth.

32 H. 8. cap. 9. None shall buy, sell, or get, or take promise, or grant to have any pretensed rights or titles to lands, &c. except the seller, or those (by whom hee claimeth) were in possessions, or took the profits, by space of a year next before, upon paln that the Seller, &c. shall forfeit the value of the land, and likewise the buyer knowing the same. Provided, hee that is in lawful possession by taking the yearly profits, may buy, &c. anothers pretensed right.

Glouc. cap. 8. Atturnies may be made in all Pleas, where Appeals lye not.

Mer. cap. 10. In suits, at a County, Tything, Hundred, Wapentake, or Court of the Lord.

Westm. 2. cap. 10. A general Attorney may bee made, in all Counties where Justices do journey.

3 H.

3. H. 7. cap. 1. An appeal of Murder or Death, may bee purſued by Attorney.

The ſuit hath two parts, the beginning and proceeding.

The beginning is the proper duty of the Plaintiff: And hath two parts.

The firſt matter of the ſuit, and originalls.

The firſt matter of the ſuit muſt alwayes bee brought in that County where the cauſe of ſuit groweth. As actions of debt upon an eſcape, may bee brought in the County where the arreſt or eſcape was. But not in any other County: A (a) treſpaſs of Battery, goods carried away, or writings broken, may bee brought in any County, for they are not local. Otherwiſe it is of trees, or graſs cut down, they muſt bee brought in their proper County, if it bee by bill, the County is ſet at the margent. 14 E. 4. 4. (a) 2 Mar. Br. attaint. 104. Br. bill 35.

Statutes.

6 Ric. 2. cap. 2. Debt, account, and all ſuch actions ſhall bee brought in the County, where the contract was made.

The firſt matter of the ſuit is for every man by writ out of the Chancery, or in Courts where Writs lye not by plaint or bill; for the King alone by enquiry.

In all of the firſt kind, the plaintiff muſt find ſurety by ſome that will bee pledges to proſecute the ſuit. And ſo is the form of every

every original *Si* (the Plaintiff) *fecerit te securam de clamore suo prosequendo*, The entry is, *plegii de prosequendo Johannes Doe. Rich. Roo.* And these may be either to the officer, or to the Court where the suit is. But a poor man instead of sureties shall give his faith to prosecute it: Whereupon the form for him is, *Et nisi fecerit & prædict* (the Plaintiff) *fecerit te securum de clamore sub prosequendo per fidem suam quia pauper est.*

9 E. 4 27.

Regist fol. 228. & per Br. pledg 29.

Writs that begin the suit, are original or Commissional.

Original which appoint the first proceis, if the plaintiff finde pledges returnable in the Kings Bench, or Common place.

This must be (*a*) true Latine, for upon *habeas ibi hos* (*b*) *breve*, or *uxori* (*c*) where it should bee *uxor*, and such like, the Writ shall abate, and besides (*d*) formal, as the general to bee put in demand, and in plaint before the special. As land is general to pree, pasture, wood, joncary, marsh, &c. Wood is the general of all trees growing, and therefore shall bee put in demand before Alders and Willows which are but *species* of it. The entier shall bee demanded before the moyety or part or parts. The more worthy thing shall bee demanded before the les worthy, as a messuage before land; for land that hath building upon it, is more worthy than land without building. A Castle before a Messuage, or a Man-

(*a*) 2 E 3. 4.
(*b*) 9 H. 7 16.
(*c*) 3 E 3. 86.
(*d*) 3 E. 3. *ibid.*

All this that followeth is the rule of the Register.

manor (and yet it may bee parcel of a manor.) But the reaſon is, becauſe a caſtle is more worthy. As being a place of force and defence againſt the enemy in time of war, and againſt Rebels in time of Rebellion, a place in time of peace fit for the correction and impriſonment of great Malefactors; and magnifical habitation of Noble men. So in a replevin, if it bee of two Chattels, one quick, and the other dead, the living thing ſhall be firſt demanded.

Alſo it muſt expreſs the name of baptiſm, and ſurname, or in lieu thereof, the name of dignity both of the plaintiff and defendant. But not the name of his Office, which is no dignity. As pr. q. r. *Johanni Duci (a) Lancaſt.* is good, but not *Johanni Regi (b) de D.* without expreſſing his ſurname. But when an Officer is to ſue by reaſon of his office, as a *(a)* prebendary *(b)* perſon, executor *(c)* gardein *(d)* by Knight ſervice, &c. there hee muſt expreſs the name of his office: or when one bringeth an appeal of murder, as brother and heir, &c.

Where there be many of one name diverſity of the names muſt be put by addition of dignity, &c. elſe the writ ſhall abate. A Corporation may ſue by the name that they are corporate, without name of Baptiſm or ſurname, as pr. q. r. *majori & communi civ. &c.* or *Decano et Capitulo D. &c.*

(a) 8 E. 4. 24. E. 4. 24 *ſaith, the reaſon is, becauſe there are in England no more Dukes of that name: and ſo it may well enough be known of whom it is meant: and alſo for the ſolemnity of the creation But otherwiſe it is of Knights, for there are* 1000 *Knights in England. Therefore there the writ muſt be præcipe J. S. militi.* (b) 27 H. 6. 3. (a) 13 E. 3. br. 675. *in act real.* (b) 12 H. 4. 10. *in Aſſiſe.* 10 H. 7. 5. *in waſt.* 18 Ed. 4. 17 *in annuity.* (c) 30 H. 6. 5. (d) 9 E. 3. 465. 33 H. 8. *Dy* 50. 37 H. 6. 29. 27 H. 6. 3.

Statutes.

1 E. 6. cap. 7. The acceptance of a new name of dignity shall not abate the writ.

Regist. fol. 228. & per Er pledg. 29.

The Kings servants in his Court or other by special grace of the Chancellor may here be admitted to finde pledges in the Chancery. And then the form is, *Quæ præd.* (the plaintiff) *fecit nos securos de clamore suo prosequendo pro C. de com. L. & B. de com. S. Summoneas*, &c.

CHAP. 3.

Of Common Pleas.

Lit. 116.

WRits original are concerning Common Pleas, or appeals that concern life.

18 E. 4. 4.

Those that concern common Pleas, lye not for or against a feme covert without her husband, but (a) an appeal of felony against her doth.

(a) 1 H. 4. 5. *Stamf.* 62. a.

Many having or giving together one cause of action, may sue or be sued together in one: which is called Joinder in action. As A. is bound to B. in one statute Merchant, and after A. and divers others are bound to the same B. in another statute, and B. by one deed releaseth to them all, and after such execution severally: They shall joyn in an *Audita querela*, because of this joynt re-

20 E. 3. *Audit. Querela* 28.

lease.

leſſe: So one *Decies tantum* ſhall bee againſt all the Jurors that take money to give their verdict, for it is the entire act of all. 36 H. 6. 28.

Several actions of one nature, as debt, and detinue (for theſe are of one nature, inaſmuch as the warrant of Attorny in a writ of detinue, and alſo the eſſoin ſhall bee in *placito debiti*) **may be joyned in one original with ſeveral *præcipes* or commandments to be executed.** 3 H. 4. 13.

Prerogatives.

Here in place of action againſt the King, petition muſt be made unto him in the Chancery, (a) or in (b) Parliament, for (c) no action did ever lye againſt the K. at the Common Law, but the party is driven to his petition, and (d) if the Eſchetor ſeize goods without cauſe, or ſeize the goods of the outlawed, which outlawry is after reverſed, and account for them in the Exchequer, the party muſt ſue by petition for them. **And that (in the caſe of hereditaments) though the King have granted the land away.** For upon an office finding *J. S.* (who was attainted of felony or treaſon by matter of record before) to bee ſeized of certain Land, if the King ſeize and grant it over, yet a ſtranger that hath right to enter, or bring his action, may do neither againſt the patentee, but muſt to the K. by petition. **Whereupon proceſſe ſhall go out againſt the Grantee to maintain his title.** As the King

(a b) *Stamf. prer.* 73.
(c) *Stamf. prer.* 42.
(d) 34 H. 6. 5.
9 H. 6. 15.
Stamf. prer. 76.

grants over his wardſhip, or any other certain eſtate in the Land: the *Scire facias* for him that ſueth the petition, muſt bee againſt the patentee, not againſt the heir, in whoſe right the King is ſeized, for hee is not to plead with the Heir, but with the King, or him that hath his intereſt. And in a petition to revoke letters patents made to two &c. a *Scire facias* upon it: the death of one of the patentees abateth not the petition, for the petition is not ſued againſt the patentees, but againſt the King, nor they need not to bee named in the petition, but in the *Scire facias*.

7 H. 4. 33.

4 E. 4. 24.

But whilſt perſonal things ſeized to the King, remain in the Officers hands, the party that hath right may traverſe the Records that entitle the King, and ſo have his goods again, or **ſue the Officer, or diſturb him to take the profits:** As where it is found that one out-lawed in a perſonal account, was ſeized of certain land; and in this caſe hee ſhall not bee driven to a petition: otherwiſe it is in caſe of a free-hold, or inheritance.

9 E. 4. 52.

Petition is a ſupplication declaring the parties right, where mention muſt be made of all the Kings title, elſe it ſhall abate. For upon an iſſue in the petition found againſt the King, hee ſhall be concluded for ever to claim by any of the points contained in the petition.

CHAP.

Chap. 4.

Of Real Actions.

These Writs concerning Common Pleas are Real or Personal. And they both again are *precipes*, or *Si fecerit te securum*. Lit. 116.

A *precipe* is that which willeth the sheriff to command the Defendant to do somewhat in certain that the plaintiff sueth for, which if he do not, then to serve the first process. The form is, *Præcipe A. quod reddat B. &c. Et nisi fecerit, &c. tunc summon. &c.* And is a *præcipe quod reddat* which lyeth for things in render. As of real things, land and such other things in demesne, rent, corody, &c. of personal things, mony, goods detained, and the like. A *præcipe quod faciat* which lyeth for things not in render, whether they lye in Feasaunce as a Writ *de consuetudinibus & servities, Sectæ ad molendium, &c.* or in sufferance, as a *quod permittat*, or in other things of any such like nature.

A *Si fecerit te securum*, is that which willeth the first process to be served without more ado. The form is, *Si A. fecerit te securum de clamore suo prosequendo tunc summ', &c.*

Real actions where a freehold shall bee reco ve- 10 E. 9. 23.

recovered are poſſeſſory or in the right.

Poſſeſſory, which are to recover a poſſeſſion, as all Aſſiſes, Writs of Ayell, Beſayell, and Coſinage.

In the right which are to recover a poſſeſſion mixt with the right, of all which examples do follow after.

F.N.B. 5. b. And both theſe may either be of a poſſeſſion or right in himſelf, or deſcended from his anceſtors: which wee call auncſtrell.

Reductions in the right, are either founded upon the right, or for the meer right.

Statutes.

Merton cap. 8. Seiſin of ones anceſtor in a writ of right, ſhall bee from the time of *Henry* the ſecond.

In a mort dauncеſtor writ of Nieſe and of entry, from the laſt return of King *John* out of *Ireland*.

In an Aſſiſe of Novell diſſeiſin, from *Henry* the thirds firſt paſſage into Gaſcoygne.

Weſtmin. 1 cap. 38. Seiſin of ones anceſtor in a Writ of right, ſhall bee from the time of *Richard* the firſt.

In an Aſſiſe of Novell diſſeiſin and *nuper obiit*, from *Henry* the thirds firſt paſſage into Gaſcoygne.

In a mort dauncеſtor coſinage, ayell, entry,

try, and Writ of Nieſe, from *Henry* the thirds Coronation.

32 H. 8. cap. 2. Seiſin in a Writ of right ſhall be within 60 years.

In a mort daunceſtor, or in another poſſeſſory action, upon the poſſeſſion of his Aunceſtor or Predeceſſor, ſhall bee within 50 years.

A Writ of the poſſeſſion of the plaintiff himſelf, ſhall bee within 30 years.

An Avowrie or Cogniſance, for rent, ſuit, or ſervices of the ſeiſin of his Anceſtor, or of his own, ſhall bee within 40 years.

Formedon in remainder, reverſion, *Scire facias*, upon a fine, ſhall bee within 50 years after the title accrew. If a man preſcribe in land, rent, or ſuch like, of the poſſeſſion of his anceſtor, or predeceſſor, hee ſhall alledge ſeiſin in them within 40 years next before the time of the preſcription, title, or claim.

1 Mar. cap. 5. The Statute of limitation of 33. *H.* 8. cap. 2. ſhall not extend to a writ of right of Advowſon. *Quare impedit*, *Jure patronatus*, Aſſiſe de Darrein, preſentment, droit de gard of any Lands holden by Knight ſervice, but the time of the ſeiſin alledged, ſhall bee as it was at the Common Law.

Theſe kind of real actions, *viz.* where the free-hold ſhall be recovered, **lye onely againſt the tenant of the Freehold.** Therefore a releaſe of all actions reals, is no plea, *Lit.* 115.

unleſs hee were Tenant of the Freehold at the time of the releaſe, for elſe hee had no cauſe of any ſuch action againſt him. Neither is any ſuch action maintainable againſt leſſee for years, for he hath not the Freehold. Nor the diſſeiſee cannot have a *præcipe quod reddat* againſt the diſſeiſor, which is parnor of the profits for years onely, notwithſtanding the Statute, becauſe by the Common Law, no action lyeth againſt him. And for this cauſe alſo, *non* tenure of the whole, or though it bee but of parcel of the thing demanded. Joynt-tenancy with one not named in the Writ. Entier-tenancy of the whole, or ſeveral tenancy of parcel, when the Writ is brought againſt two or more, are good Pleas in abatement of the Writ.

Old tenures f.2.

6 E.6.Pl.87.

4 E.4.32.

19 H.6.32.
22 H.6.12.
45 E.3.5.
37 H.68.
27 H.8.30.

Statutes.

25 E.3.ca.16. *Non* tenure ſhall not abate the Writ, but onely for the quantity.

37 E.3.cap.17. No Writ ſhall bee abated by knowledgement of villenage, if the Demandant or Plaintiff will aver that hee that alledged the exception was free, day of the Writ purchaſed, **with the freeholder may be joyned in action, any having title to enter**; as the Morgagor with the Morgagee, the Lord with his villein; but not the diſſeiſee with his diſſeiſor.

41 E.3.16.

CHAP.

Chap. 5.

Of a Plea of Land.

A Real *præcipe quod reddat* is that which is for real things in render. And is a plea of land, or other such real precipe.

A plea of land which is for land or other such things in demesne, where land in certain is demanded, it must alwayes bee brought in a ville, or place known out of any ville. And not in a Hamlet which is parcel of a vill. But personal actions, as trespass, and such like, may bee in a Hamlet. So of Dower and Assise, for there no land in certain is demanded, and also in an Assise, hee shall recover by view of the Jury. So in a *Scire facias* out of a fine *nuper obiit*, a Writ of mesne, covenant, wast, *quare impedit*, These may bee in a Hamlet. Otherwise it is of a Writ of right of Advowson.

A plea of land is a Writ of Entry, or a writ shewing the Demandants title.

A Writ of Entry is that which is to disprove the Tenants possession by the means of his entry.

Wherein Tenant in fee simple demanding of the possession of his ancestor shall say in the Writ, *quod clamat esse jus & hereditatem suam*. Tenant in Tail, or for life, shall not so. But in his declaration set *Old N. B. 124. Fit. N. B. 201. & f.* *Fit. Nat. Br. ibid*

ſet forth his ſpecial eſtate.

A writ of Entry is either againſt the firſt party, or in the degrees.

Againſt the firſt party, when it is againſt him to whom the firſt alienation was, or that made the firſt diſſeiſin.

That in the degrees, is in the *Per*, or in the *Per* and *Cui*.

In the *Per*, when he againſt whom it is brought, cometh in immediately under the firſt party, as heir unto him, or by alienation from him.

In the *Per* and *Cui*, when hee againſt whom it is brought cometh in immediately under the firſt parties heir or alienee. For if more than theſe two alienations (the *Per*, or the *Per* and *Cui*) paſs, the demandant is driven to his writ of right. And the reaſon is, that there may bee an end of ſuits. For no Writ of Entry in the Poſt lay at the Common Law, but the ſame is given by the ſtatute of Marlebridge. cap. 29. Which writ of Entry in the Poſt given now by that Statute, lyeth, when hee againſt whom it is brought cometh in, neither in the *Per*, nor *Per* and *Cui*, then the writ ſhall bee *In quod, &c. niſi poſt demiſſionem, &c.* Out of all degrees, as by abatement, diſſeiſin, eſcheat, recovery, Election, Succeſſion, Dower, Judgement, &c. or as the third or more feffees.

The form of all which is thus. In a writ of Entry, in the nature of an Aſſiſe, againſt the party himſelf that did the diſſeiſin,

Præcipe

Præcipe A. quod reddat B. unum Meſſuagium, &c. de quo A. injuſte et ſine Judicio diſſeiſivit B. &c. or in the other form *diſſeiſivit C. patrem*, or other anceſtor of *B. cujus hæres ipſe eſt*, &c. In the *Per* thus. *In quo idem A. non habet ingreſſum niſi per C. qui illud ei dimiſit qui injuſte B.* &c. (or in the other form) *qui injuſte*, &c. *E. patrem*, &c. *prædict. B.* &c. In the *Per* and *Cui* thus. *In quod*, &c. *niſi per C. cui D. illud dimiſit qui inde injuſte B.* or (in the ſecond form) *qui injuſte E. patrem*, &c. *præd. B.* In the poſt thus. *In quod*, &c. *niſi poſt diſſeiſinam quam D. injuſte fecit præd. B.* or (in the other form) *injuſte fecit E. patri*, &c. *præd. B.* &c. In ſuch like manner it is of a *Dum fuit infra ætatem*, and of all other Writs of Entry upon an alienation. **Marleb.** cap. 29.

Writs of Entry grow either without wrong at the firſt, or upon a wrong.

Thoſe without a wrong at the firſt are grounded upon a determination of the firſt eſtate, or a diſhability in the perſon that made it.

Upon a determination of the eſtate, either by reaſon of a particular eſtate ended, or a condition broken.

Of a particular eſtate ended is an *ad terminum qui præteriit*, or *Entre ad Communem Legem*.

Ad terminum qui præteriit, is upon a forcement by the leſſee or a ſtranger after a leaſe for years, or life expired, whether the Leſſee did alien, or not. But not after

the death of Tenant in Dower, or by Curtesie, for that is not properly called a Terme.

Entry *ad communem legem*, **is when Tenant for life**, bee it his own or anothers life, Tenant in Dower or by curtesie of England **doth alien and die**, and hee in the reversion for life, may have this Writ.

Of a condition broken, as *Causa matrimonii prælocuti*, *Causa matrimonii prælocuti*, **is for a woman that giveth land to a man to marry her, and he will not**: but it lieth not for a man that giveth lands to a woman.

Grounded upon the disability, are a *Dum fuit infra ætatem*, **and a** *Dum non fuit compos mentis*.

Dum fuit infra ætatem **is by the infant, when hee cometh to his full age, upon an alienation by himself, or his ancestors being within age.**

But the clause that hee is of full age, *viz. qui plene est ætatis*, **shall not be inserted in the Writ, if either it be brought in the degrees,** *Per, cui*, **or** *post*, **or upon the ancestors alienation.**

Dum non fuit compos mentis, **is upon the alienation of himself, or his ancestors being of** *non sane memorie*.

Those upon a wrong at the first are either upon a discontinuance, or an ouster.

Upon a disseisin, as a *Cui in vita*, **or a** *Sine assensu capituli*.

A *Cui in vita*, **for the wife after the husbands death upon his alienation of her fee-simple, fee-tail, or free-hold**, whether Dower

dower or otherwise, or of such a joynt estate in them.

And in this writ claiming a fee simple, but not an estate Tail or a free-hold, for there the writ shall make special mention of the estate, shee shall say, *Quod clamat esse jus & hereditatem suam*, though it bee of her own possession.

Statutes.

Westm. 2. cap. 3. A *cui in vita* given to the wife after her husbands death, upon his losing of the Land by default. And the Tenant that recovered against her husband must maintain his own right.

If it be an estate of fee-simple, and shee bring not in her life time a *cui in vita*, the heir shall have a *Sur cui vita*. But of an estate tail onely, a formedon lieth in this case for the heir.

And of this nature is a *cui ante divortium*, when it is brought by the wife after divorcement, upon such an alienation as before.

A *fine assensu capituli* is for the Successor of a Bishop, Abbot, Prior, Dean, Prebendary, or Master of any Hospital after the discontinuance of the Predecessor, *viz.* when they alien the Lands they have in the right of their Church, house, Abby, or Priorie, without the consent of their Covent, Chapter, or Conserers, &c.

Upon

Upon an ouster, or either upon an intrusion or a disseisin.

That upon an intrusion is called a writ of intrusion, and is for him in the reverti-on or remainder in fee-simple, or for life, not in tail (for hee shall have a formdon) nor for years, because hee hath not the freehold, **after the death of tenant for life** in Dower, or by curtesie.

And if Land bee given to two, and the heirs of one, and hee that hath fee dyeth, and after him tenant for life dyeth. Now the heir of him in the remainder shall have this writ. And it lieth also for the assignee of the assignee of him in the remainder.

Upon a disseisin, is when the disseisin is done to him or his Ancestors. **As a writ of Entry in the** *Quibus*; or which is all one in the nature of an Assise.

Writs that shew the demandants title, are meer possessory, or in the right.

Meer possessorie are those which are brought by the next heir upon an abatement after the death of an ancestor, other than his father, mother, brother, sister, Uncle, Aunt, Nephew, Neice, for upon an abatement after the death of any such auncestor, an Assise of mort dauncestor lyeth as shall appear afterwards: **seised in demesne, as of a fee simple the day of his death,** though hee were disseised the very same day, and so died not seised at all. **Of this nature are,**

A writ of Ayell after the death of his Grandfather or Grandmother.

A writ of Befayel after his great Grandfather or Grandmother.

A writ of Coſinage after the death of his great great Grandfather or Grandmother, or any other collateral Coſin, as the great great Grandfathers brothers.

Statutes.

Weſt. 2. cap. 20. In a writ of Coſinage, Ayell and Befayell, the point ſhall bee enquired whether the demaundant bee next heir as well as in a mort daunceſter.

In the right, is that which is to diſproove the right of the Tenant, and is a writ of right in his nature, or a *Præcipe in Capite.*

A writ of right in his nature, which ſheweth how the demaundants right is deriued. And is a Formedon, or a writ of Aiſhete and Dower, *unde nihil habet.*

A Formedon is a *Præcipe quod reddat*, ſuing the party by the forme of the gift.

Thus a Formedon in remainder, or a Formedon in reverter: for a formedon in deſcender lyeth not at the Common Law, but is given by the Statute of Weſtmin. 2. cap. 1.

Old Nat. Br. 1. *Br. Formd.* 69. 3 *El. Pl.* 235.

A Formedon in remainder is for him in the remainder for (*a*) life, or in (*b*) fee upon deceaſe for (*c*) life expired. For after an eſtate

(*a*) *Old Nat. Br.* 148, 149.
(*b*) *F.N.B.* 217. *d.*
(*c*) *Fitz. ibid.*

eſtate taile expired, it lay not at the Common Law: becauſe it was a fee ſimple, whereupon a remainder could not depend.

Fit.N.Br.219.c. *30 E.1.formd.* *65.* A **Formedon in reverter is for the donor after the iſſue in taile determined**, as at the Common Law, if the donee alien before iſſue had, and after die without iſſue; or if hee have iſſue, and after hee or his iſſue dye without iſſue. Contrary it is if hee had iſſue, and then had alienedy and died without iſſue.

A **writ of Eſchete is for the Lord** that hath a ſeigniory in fee, or for life **upon an eſchete.**

Old Nat.Br.6. **Dower**, *unde nihil habet*, **is a writ for ones dower, which hath received no part at all of it.**

Statutes.

Weſtm. 1. cap. 48. A writ of dower *unde nihil habet*, ſhall not abate, though ſhee have received part of her dower before the writ purchaſed, unleſs it were of the ſame part againſt whom the writ is brought, and in the ſame Town.

Br. prær. q.d. redd. 35. A **writ of dower lyeth againſt garde by Knight ſervice**, though he be not tenant of the free-hold.

Fit.Nat.Br. 5 f. A *præcipe in capite* **is a** *præcipe quod reddat*, **for the meer right**: and therefore lieth onely for Tenant in fee-ſimple **of Lands holden in Chief.**

Statutes

Statutes.

Merton. 2. cap. 4. In a place of a writ of right, a *Quod ei deforceat* is given to Tenants for life or in taile upon looſing by default.

Chap. 6.

Of a writ of right of ward, and a writ of right Sur diſclaimer.

Other reall *præcipe quod reddats*, are thoſe which are in reſpect of a ſeigniory, as a writ of right of ward, and a writ of right ſur diſclaimer.

A writ of right of ward, is to recover a ward-ſhip. If of the body, it lyeth both a garde in foccage, and by Knight ſervice. If of the land, it lyeth onely for garde by Knight ſervice. *Fitz. Nat. Br.* 139.

Statutes.

Marleb. cap. 7. In a writ *De communi diſtria*, if the deforcer come not at the ſecond diſtreſs, the ſame Writ ſhall bee reiterated, as oft as well it may bee within the year following, and every time the

the Writ read, and Proclamation mad
the County Court, if hee come not to a
swer, nor the Sheriff finde him within h
a year, hee shall lose the custody. Saving
action another time, if hee have right.

west. 2, cap. 35. In a Writ of Ward
land, or heir, or both, either of the pa
dying before the plea determined, a re
mons shall bee. And in the grand dist
day must bee given that three County d
may bee holden before the return, in e
of which Proclamation shall bee ma
whereupon the defendant not appear
Judgement shall bee given for the Plain
Saving the right of the defendant, if af
wards hee will claim it. So shall it be
in a writ of ejectment of gard.

A writ of Right *Sur disclaimer* **is to**
Lord, to prove the Lands to be holde
him, when in an action where the ser
should bee recovered, As in an a
made upon the Tenant for them: for
hee shall recover the services inclusive,
much as hee is to have a return in an A
or *præcipe quod reddat* of rent (for then
services are expresly demanded) but not
per quæ servitia (for there no services be
Attornment onely is demanded) nor
Justification, in a replevin, or an a
in an action of Tresp as (for there the
fendant shall never have a return, bu
cover his services expresly, not inclu
the Tenant in Court of Record, or

13 H. 7. 27.

Ibid.

5 E. 4. 2.
13 H. 7. 27.
15 E. 4. 29.

Old Nat. Br. 162.

the Common place, but not in Court Baron, or County Court. For there, if the Lord make avowry upon the Tenant, and hee disclaim to hold of him, the Lord shall bee amerced, **disclaimeth to hold of him.**

And if in this writ of right sur disclaimer, **he can probe the Land to be holden of him, he shall recover the land it self,** forever: because the disclaimer is of record. *Ibid.* 16 *H.* 7. 1. Therefore by such a disclaimer, he is barred of all possessory actions for the services, as an Assise, Cessavit, ravishment of ward, and such like: but not of a writ of Eschete, Right of ward, right of customes, and services, &c. 34 *E.* 3. *Disc.* 24 And though the Lords distress and avowry were lawful, yet the Tenant so disclaiming, shall recover dammages of him, for the disclaimer giveth the Lord a better advantage, *viz.* the Land it self. 16 *H.* 7. 1.

Statutes.

Westm. 2. cap. 2. If the Tenant disclaim in County Court, or other Court not of Record, the Lord may remove the plea before the Justices, to cause it to be of Record, so as hee may have a writ of Right sur disclaimer.

Gloces. cap. 4 & Explanat. cap. 4. when land is given in fee-farm, rendring or doing so much as amounteth to the fourth part of the value of the Land, if hee (whose Land is charged) let it lye fresh by two years, so as no distress can bee found in it, nor

not render, or do that which is contained in the writing, the other ſhall recover the land by a Ceſſavit. But the donee coming before Judgement, if hee render the arrerages and damages, and finde ſufficient to do from thenceforth, that which is contained in the writing, ſhall retain his land.

weſtm. 2. cap. 21. If a man detain from any Lord his ſervice due by two years, the Lord ſhall recover the Land by a Ceſſavit. This lyeth alſo for the heir of the Lord againſt his Tenant, his heirs, or thoſe to whom hee alieneth the Land.

Weſtm. 2. cap. 41. So if religious houſes that have Land given them, &c. withdraw the alms, &c. by two years, the donor ſhall have the like action.

CHAP. 7.

Of a Writ, De conſuitudinibus & Servitiis, *and* Sect aad-molendinum.

A Real *præcipe quod faciat* is either to recover hereditaments, or ſome real thing that concern them.

F.N.B. 151.g. Thoſe that are to recover ſome hereditament, demanding of ones ſeiſin are in the *debet* and *ſolet*, demanding

manding of the ancestor seisin, they are in the *debet* only, and then are in all respects as writs for the meer right, that is to say, meerable by battail, or grand Assise.

These are either in respect of a seignory for to recover some other hereditament.

In respect of a seignory, as a writ *De Consuetudinibus & Servitiis*, and a *secta ad molendum*.

A writ *De consuetudinibus & servitiis* lyeth for the Lord that hath an estate for life, or a greater estate, in the seignory, and is deforced of his services. *Fit.N.B.151.b.*

Secta ad molendinum lyeth for the Lord, when the Tenants that hold of him by grinding their corn at his Mill, withdraw their suit, and grind elsewhere. *Fit.N.b.122.m.*

T

Statutes.

Marlebr. cap. 9. The Proces either where the Lord distraineth against the form of this Statute, or the Tenants withdraw the sums due, is attachment (wherein onely essoin is allowable, and deliverance of the distress incontinently to remain so till the plea bee ended) *venire facias*, and the grand distress. At which day not appearing, the distresses delivered shall so remain till recovery in the Kings Courts, till which time the Lord (in case hee bee Defendant) must distrain no more, and the Plaintiff shall bee nonsuited without day; if the Defendant come to answer, and the matter pass a-

gainst him, the Plaintiff shall recover damages.

This of damages to be recovered (in case where the Tenant is Defendant) is to be understood of withdrawing the suit from the Lord himself, and not from his Predecessors.

Chap. 8.

Of a Quare impedit, and a quod permittat.

For what Hereditaments a quare impedit and a quod permittat.

A *quare impedit* lyeth upon a disturbance, where he, or his ancestors, or those from whom he claimeth, having at any time before presented, himself is now disturbed.

Fit. Nat. Br. 33 b.

Statutes.

25 E. 3. cap. 7. Upon the Kings collation or presentment to a benefice, title shall be well examined, and found before Judgment thereupon, or the collation or presentment shall be repealed. And the patron or possessor who recovereth the false title, shall have the Writ out of the Chancery, as many as necessful.

T

Quarto. cap. 12. In a *Quare impedit*, and Assizes of Darrein presentment, day shall be given from fifteen dayes to fifteen dayes, and from three weeks to three weeks. And in a *Quare impedit*, the proces shall bee a Summons, attachment, or grand distress

Glocest. 2. cap. 5. If Coparceners make partition to present by turn, and one of them present accordingly, hee that is afterwards disturbed shall have a *Scire facias* (and not bee driven to his *quare impedit*) and recover his presentation with damages.

An Avowson (after the death of one that hath presented) being assigned in Dower, or to Tenant by Curtesie, and they present, the heir if he be disturbed after their death shall have a *quare impedit*, or Darrein presentment at his pleasure. So of an Avowson granted for life, years, or in tail, when six months pass having a *quare impedit* or Darrein presentment, so as the Bishop presenteth by lapse, the parson shall recover damages but for two years value of the Church: otherwise damages to half a years value: The disturber not being able to render damages, shall in the first case have imprisonment of two years, in the second of half a

A *Quod permittat* lyeth for one that hath Common of pasture for his beasts, being disturbed by a stranger, so as hee cannot eat his Common. *Fit. Nat. Br.* 123. *f.*

Chap. 9.

Of a Curia claudenda, *Writ of Covenant real, meſne and warrantia charta, where of fines.*

THoſe that are to recover ſome real thing concerning Hereditaments are a *Curia claudenda*, or a Covenant real, and other Writs founding in that nature.

A *Curia claudenda* lyeth for a (a) Freholder, not for a Tenant for years, when one that hath a Cloſe next adioyning to him, which he ſhould keep incloſed, will not do it. A Writ of Covenant real, lyeth upon a Covenant to do a thing real, as to levy a fine of lands, &c. Writs in the nature of a Covenant real, are a writ of meſne, and a *warrantia charta*.

(a) F.N.B. 128. a. F.N.B. 127. b. & 128. a. F.N.B. 136. f.

A Writ of meſne lyeth for the Tenant againſt the meſne, when the Lord paramount doth diſtrein the Tenant whom the meſne ought to acquit.

Fit.N.Br. 135. m.

Statutes.

Weſtm. 2. cap. 9. The Tenant diſtreſſed by

by the chief Lord may have a writ in the County where hee is distreined against the mesne, who having land in that County, and not appearing till the grand distress, day shall bee given in the grand distress, so as two Courts may bee holden before the return. Wherein the Sheriff shall proclaim that hee come to answer the Tenant at the day. At which day if hee come not, hee loseth his service, and the Tenant shall hold of the chief Lord by the same services that the mesne held. The chief Lord may not distrein the Tenant of the demesne if hee offer the service due. And exacting of him more then the mesne ought to do, that Tenant shall have the remedy that the mesne might have.

Upon a return that the mesne had nothing to bee summoned by an Attachment shall go out, and upon a *nihil* returned, the grand distress with proclamation as before.

The mesne having no land in that County but in another, upon such a return by the Sheriff, the party shall have a Writ Judicial to summon the mesne in that County where it is testified that hee hath lands, and both there, and in the other County shall proceed to the grand distress, and Proclamation and Judgement as before.

The mesne coming into the Court and

knowledging, or being adjudged to attorn his Tenant, and not doing it, the Tenant shall have a Judicial Writ of ſequiſtrari. Whereupon if the meſne come in, and the Tenant can averr that he hath not attorned him, he ſhall bee ſatisfied of his damages, and bee quit of the meſne, and hold of the chief Lord, and if the meſne come not at the firſt diſtreſs, then another diſtreſs ſhall iſſue, and proclamation, and ſo proceed to Judgement as before.

This Statute extendeth only where there is but one meſne between the Lord that diſtraineth and the Tenant, the meſne of full age and the Tenant, tenant in fee ſimple.

A *Warrantia Charta* lyeth for him that hath lands or Tenements warranted unto him, either by feoffment (*a*) releaſe or confirmation with clauſe of warranty, where his hereditaments are lyable from the time of the action brought. There ſure it is policy for one to bring his *Warrantia charta* before hee bee ſued. For upon vouching when hee is once ſued, hee recovereth value but ſuch lands as the vouchee had at the time of the voucher.

F.N.B.134.d.
(*a*) 12 H.4.22
Fit.Nat.Br. 134.k.
12 H.6.22.

And upon theſe writs of (*a*) Covenant, (*b*) meſne, (*c*) warranty of Charters, as alſo upon a Writ of (*d*) cuſtome and ſervice, a fine may be levied.

(*a*) 42 E.3.5.
(*b*) T.H.Fitz-John per Dy.179.
(*c*)
(*d*) 21 E.3.18.

A fine is the acknowledging of an hereditament in the Kings Court according to the covenant, to be his right that hee

con-

[illegible], They that complaineth is called Plaintiff, and the other Deforceant. And the acknowledging of it to bee his right is called a *fine sur conuſance de droit*, But the right bee acknowledged to bee his, as that which he hath of the gift of the Deforceant, it is called a *fine sur conuſance de droit come ceo que il ad de lour done*. The form of it is, *hec eſt finalis concordia facta in curia*, &c. *vnde placitum conventionis inter*, &c. *videlicet quod* [illegible] *recognouit tenementa prædicta esse ius ipsius*, &c.

A fine may bee levied upon a writ of warranty of Chatrels, for it is in effect but a Covenant between the parties before the Iuſtices, and entred of Record. And before the Statute of *Weſtm. De his quæ conteruntur* (which giveth a *fine ſur ſur.*) if the fine were not executed, the party ſhould have a writ *De fine facto*, and recover damages only, which proveth that a fine is but a covenant of Record. 42 *E.* 3. 5. 40 *E.* 3. 7.

Where one of them muſt needs have an eſtate at the time of the fine levied, for against the plea that the parties to the fine had nothing, &c. it is no good replication, that the parties were ſeiſed, &c. for if one of them were ſeiſed it is ſufficient. Which form of pleading (*viz.* that one of the parties was ſeiſed) proveth that if hee have left an eſtate for years the fine is void. And a fine of the land it ſelf will paſs away a reverſion depending upon an eſtate for life. And this is as it were a 22 *H.* 6. 57. 27 *H.* 8. 4. 37 *H.* 6. 5. 7 *Eliz. Play.* 360.

Lit. 12. is that is a feoffment made en pais. &c. where a freehold passeth be it by deed or without, there must needs be livery of seisin, which words (en pais) are put to exclude fines that are feoffments of record.
18 E. 4. 22.
36 H. 8. Br. fines. 118.

feoffment of Record. So as a Free-hold passeth thereby without any livery of seisin. **That whereof the fine is levied, or any thing contained in it,** as a rent Common, &c. out of the land, an estate for years, or other estate in the land, &c. **may be granted back again to the Conisor by the same fine.** And this is called a fine *sur grant & render*. The form whereof is, *Et prædictus recognitionem, &c.* the conisee *concessit*, to the conisor, *prædictum tenem' cum pertinen. & illum reddidit in eadem curia habend'*, to the conisor, &c. for none can take the first estate but those that are named in the Writ of Covenant. But every stranger may take a remainder. As A. levieth a fine to B. who rendreth it back to A. and E. his wife, &c. In this case E. hath no estate, for shee was not party to the Writ.

Statutes.

27 H. 1. Stat. 1. cap. 1. *De finibus levatis.* Exception against a fine, that the Plaintiffs or Defendants, or their Ancestors, were alwayes seised of the lands contained in the fine shall not from henceforth be admitted in the parties to the fine or their heirs.

The fines shall two dayes in the week be publickly and solemnly read, and all pleas cease in the mean time.

5 H. 4. cap. 14. All Writs of Covenant and other, whereupon fines bee levied, the

Dedi-

Dedimus poteſtatem, and all knowledges and notes of the ſame, before that they bee drawn out of the Common bench, by the Chirographer, ſhall bee inrolled in a roll to bee of record for ever. Out of the which execution ſhall bee had, if the notes or fines ſhall be imbezilled.

23 Eliz. cap. 3. Every Writ of Covenant, or other writ whereupon any fine is levied, the return thereof, the *Dedimus Poteſtatem*, and return thereof, the concord, note, and foot of the fine, the proclamations and the Queens ſilver. Alſo every writ of Entry in the *Poſt* or other writ, whereupon any common recovery is ſuffered, the Writs of ſummons *ad warrantizandum*, and the returns of all theſe writs, and every Warrant of Attorny may at any mans requeſt bee inrolled. Which enrolment ſhall bee of as great force to all purpoſes in Law, as the things themſelves, if they were extant.

No fine, proclamation, or common recovery ſhall bee reverſed by writ of Error, by reaſon of falſe Latine, raſure, enterlyning, miſentring of the Warrant of Attorny, or of any proclamation miſentring, or non return of the Sheriff, or by reaſon of any other defect of form in words, and not in matter of ſubſtance.

Fines executed binde all perſons, if claim bee not made within a year, therefore it is called a fine, *Quia finis finem litibus* *Lit.* 104.

impone-

impositum. And in a fine upon a render, if the Conisee sue not execution within the year, but after the year, by a *Scire facias*, no stranger need to lay to his claim.

7 Ed. 2. 37. Contin. Claym. 7

Statutes.

34 Ed. 3. cap. 18. The plea of non claim, of fines from henceforth to bee levied, shall not bee any barre.

34 Ed. 3. cap. 16. Every fine after the ingrossing shall bee proclaimed in the Court, the same Terme and the three next, four several daies in every Terme, all pleas ceasing the whilst. Which proclamation so made, the fine shall conclude all privies and strangers, except women covert, persons within 21 years of age, in prison, out of the Realm, or if non sane memory (being no parties to the fine.) So they or their heirs take their action, or lawful entry within five years after those impediments removed. Saving to all persons, and their heirs (other than parties) the right claim and interest which they have at the time of the fine. So that they pursue it by action or lawful entry within five years next after the proclamations. And saving to all other persons, such right, title, claim, and interest, as first shall grow, remain, or come to them after the proclamations, by force of any matter before the fine. So they take their right according to the

within five years next after it grow, &c. And those that bee covert Baron, &c. at the time when it groweth, &c. that they or their heirs take their action, or lawful entry within five years after those impediments removed.

Saving also to all men parties, nor privies the exception that none of the parties, nor any to their use, had any thing in the lands at the time of the fine.

11 H. 8. cap. 36. All fines levied by any person of 21 years of age of Lands entailed before the same fine, to himself or his ancestours in possession, reversion, remainder or use, shall immediately after proclamation made, bee a sufficient bar against him and his heirs, claiming only by such entail, and against all other, claiming only to his use, or the use of any heir of his body.

1 Mar. cap. 7. All fines whereupon proclamations bee not, or shall not bee duly made (by reason of the adjournment of any Terme by Writ) shall bee as good as if any Term had been holden from the beginning to the end, and proclamations therein made according to the statute.

31 Eliz. cap. 2. Proclamations of fines shall bee onely four times, *viz.* once in the Terme wherein the fine is ingrossed, and once every of the three Terms next after.

A femecourt toyning with her husband *Lit.* 149.

in

in a fine it bindeth her for ever. Therefore here the Justices must examine her
15 E. 4. 1. to see that she do it willingly. For if she say upon her examination, that the husband did imprison her to levy the fine, this fine is not to bee received. A grant by fine of a seignory, rent charge, rent seck, remainder, or reversion, is presently good, but for bringing actions that run in privity between the Tenant and him. As an
48 E. 3. 15. action of Waste or *Cosimili casu*, when the reversion of Tenant for life is granted by fine, and after Tenant for life alieneth in fee, a Writ of Eschete or Ward, when the Tenants services are granted by fine, and after the Tenant dyeth without heir, or his heir within age. But in these cases hee may enter
37 H. 6. 5. for a forfeiture or eschete, and seize the Ward: and shall also bee received upon default of Tenant for life.

CHAP. 10.

Of an Assise and Juris utrum.

THus much of real *præcipes*. Real *si fecerit te securum*, are an Assise,
F. N. B. 177. a. and *Juris utrum*, or other.

An Assise is such a real Plea mesne in possession.

An

An Assise of ones own oneiy possession is an assise of novell disseisin, or an assise of Mutance. An assise of novel disseisin is for a free-holder against his disseisor, whether it bee of land or rent, or the Baylife of the disseisor, if himself cannot be found. And being of a rent charge, or rent seck, all the Tenants of the Land, wee call them, tertetenants must bee named, and the whole land put in view, though hee were disseised by one Tenant oneiy. If the Land distreine the Tenant too often for the rent or services: that is to say, such as too great a distress may bee taken for, as rent service, &c. but not for fealty, suit of Court, &c. for which there cannot bee any too great distress. And whether it bee the Lord mediate or immediate, the Tenant may have an assise: the reason is, for that the tenant cannot make rescouse.

31 *ass. Pl.* 31.
32 *ass. Pl.* 10.

Statutes.

Magn. chart. cap. 12. Assises of mortaunceſter, and of novell disseisin, shall not bee taken but in their proper County by the Justice of Assise, and if they cannot bee determined there, they shall bee determined by the same Justices in their journey: upon difficulty of any points, they shall bee reserved to the Justices of the Common place, and there determined.

westm.

Westm. 2. cap. 43. [illegible] Lands by gift by Deane marchant, and by [illegible] Ralph, shall have an Assise or rediseisin.

Westm. 2. cap. 49. The guardein of the Lord enfeoffing one of parcel of Land in his hands, the heir may presently have assise of novel disseisin against the guardein and tenant, and the guardein shall lose warrandy, and all the remnant that he had of the heirs for life.

Westm. 2. cap. 15. A man shall have assise for estovers of wood, profit to be taken in wood of nuts, accorns, and other fruits of Curodies, delivery of Corn, and other victails and necessaries of money bee received yearly in a place certain. Toll, trorage, passage, pontage, pawnage, and such like, to bee taken in places certain. Custodidies of woods, parks, forrests, fishes, warrens, gates, and other Baily[illegible] and offices in fee. And in all these cases writ shall bee de libero tenemento. Like an assise is given for common of Turbe-fishing, and such like. Commons which a man hath appendant to a free-hold, or without free-hold by special deed, at the least term of his life.

Westm. 1. cap. 24. An Assise given [illegible]

gainst Escheator, Sheriff, or other Bayliff of Liberty, that seizeth any Lands by colour of his office, without speciall warrant or commandement, or certain authority that belongeth to his office so to do, and double damages to bee recovered.

Stat. 2. cap. 19. When tenant for years, or in ward aliened in fee, the reuersion shall bee by an assise, as well against the heire as the feoffee, during the life of either of them. If by the death of either of them, remedy fail by that Writ then the remedy shall bee by a writ of Entry.

Stat. 2. cap. 18. An assise of novel disseisin of rent out of Tenements in divers Counties, shall bee in the confine of the same Counties.

Stat. 2. cap. 25. In an assise, if tenant vouch a disseisor, do personally alledge an exception, whereby the taking of the assise may bee deferred, as that another hath an assise of the same Land passed between the same parties, or that there is a Writ of higher nature hanging, &c. and hereupon voucheth Rolls or records to warranty, and at the day given him, hee fail of that hee vouched, hee shall bee adjudged a disseisor, without taking an assise, render double damages, and have a years imprisonment. If such exception bee alledged by the Bayliff in

the

the abſence of his Maſter, the taking of the Aſſiſe, and judgement ſhall not thereupon be delayed. But his Maſter afterwards offering to prove before the ſame Juſtices, ſuch an exception ſhall have a *venire facias* for the Record, which if the Juſtices ſee, might have been available to have barred the Plaintiff, they ſhall award a *Scire facias* againſt him that recovered, wherein the defendant ſhall recover again his ſeiſin, and damages, with his double damages ſuſteined ſince the firſt judgement and impriſonment of that party that recovered. In like manner if the defendant, againſt whom an aſſiſe paſſed in his abſence, ſhew any deed, releaſe, whereupon the Jury were not, nor could not be examined, becauſe there was no mention of them in the pleading, the Juſtices, upon ſight of thoſe writings ſhall award a *Scire facias* againſt the party that recovered, and cauſe the ſame Jurors to come before them. And the writings being proved true by their virdict, or by the enrolment of them, like puniſhment ſhall be as before.

Weſtm. 2. cap. 30. The Jurors ſhall not be compelled to finde a diſſeiſin, or no diſſeiſin, but may give their virdict at large.

Merton. cap 3. A man diſſeiſed recovering his ſeiſin by aſsiſe of novell diſſeiſin, or confeſsion of the party, and having the ſame delivered him by the Sheriff, if hee be

again

again disseised of the same Tenement, by the same disseisor shall have a writ of redisseisin to command the Sheriff, taking with him the keeper of the Pleas of the Crown, and other lawful Knights in proper person to go to the land, &c. and by the first Juron, and other lawful men, to make enquiry. This must not be without special commandement of the King.

Statut. 2. cap. 26. A writ of redisseisin shall lye for them that have recovered by default, redicion, or otherwise, without recognition of the Assises and Jurors.

Merton. cap. 3. The redisseisor shall bee imprisoned.

Marleb. cap. 8. And not delivered without special commandement of the King, and besides shall pay a fine.

Statut. 2. cap. 26. Hee shall answer double damages, and not bee repleviable by the common writ.

Statut. 3. cap. 8. In fine, writs of redisseisin must be inrolled in the Chancery, and a *transcript* thereof shall bee sent into the Exchequer in the end of the year. **An assise of nusance is for him whose free-hold is hurted by any nusance,** for if he have but a lease for years in the Land, hee shall not have an assise of nusance, but an action upon his Case. F.N.B. 184.

Statutes.

The form of the writ F.N.B. 195.

14 El. Dy. 310 is that the 3. points to bee inquired in a Mortdanceſter (all expreſſed in the writ) are 1 whether the anceſtor were ſeiſed in fee day of his death. 2 whether the demandant be his next heir. 3 whether the anceſtor died within 50 years next before the writ purchaſed.

(a) F.N.B. 196. k.

(b) F.N.B. 195. d.

4 El. Pl. 239.

F.N.B. 195. d.

ceſſe 2. cap. 24. Giveth an aſſiſe of nuſance againſt him to whom the Tenement is alienated after the nuſance is made.

6 Rich. 2. cap. 3. The Plaintiff, if he will, may have a writ of nuſance in the nature of an aſſiſe, determinable before the Juſtices of one bench or other, or before the Juſtices of aſſiſe.

An aſſiſe of his anceſtors poſſeſſion ſimply called an aſſiſe of mortdanceſtor, is for the next heir upon an abatement after the death of his father, mother, brother, ſiſter, uncle, aunt, nephew, or niece: for of other auncestors, a writ of Ayell, Beſayell, or Coſinage, and not a mortdanceſtor lyeth, who was ſeized in demeine as of a fee (a) ſimple the day (b) of his death, though hee were diſſeiſed the very ſame day, and ſo dyed not ſeiſed at all. But upon Lands given to one and his ſecond wife (hee having a ſon by a former) and the heirs of their two bodies, their ſon cannot have a mortdanceſtor (after the death of his father overliving the ſecond wife) for hee is not next heir, but his eldeſt brother: and therefore, by the Common Law, hee was driven to a Formedon endeſcender, which was nothing elſe but a Writ formed upon his caſe. So if the auncestor were ſeiſed in tail, the remainder to his right heirs, a mortdauncestor lyeth not, for there, of the demeſne

meane hee is seised in taile, not in fee.

Statutes.

Magn. chart. cap. 12. vide supra.

Marleb. cap. 16. A mordaunceſtor given againſt the Lord that will not render the Land to his ward at full age.

Westm. 2. cap. 4. If a woman having no right recover dower againſt a gardein, the heir at full age ſhall have a mordaunceſtor againſt her.

Glouceſt. cap. 6. All the heirs, whereof one is ſon or daughter, brother or ſiſter, nephew or niece, and the other in a further degree ſhall joyn in a mordaunceſtor.

Glouceſt. cap. 3. The heir ſhall have an aſsiſe of mordaunceſtor, if Tenant by curteſie alien and leave no aſſets.

An aſsiſe which may bee either of his own, or his anceſtors poſſeſſion, called an aſsiſe of darrein preſentment is upon a diſturbance to han (a) himſelf or his anceſtor his laſt preſent: and therefore lyeth for (b) tenant in years, as well as for him that hath an eſtate of inheritance, or for life.

(a) F.N.B. 31 g. Old N. B. 33.
(b) F.N.B. 31. d 5 H. 7 16.

Statutes.

Magn. chart. cap. 13. An aſsiſe of darrein preſentment ſhall bee alwaies taken

before the Justices of the Common place.

F.N.B. 48. r. Marleb. cap. 12. and Westm. 2. cap. 2. A *Juris utrum* is such a real plea common upon the right for a Parson or Vicar upon his predecessors alienation.

Statutes.

14 E. 3. cap. 16. A *Juris utrum*, and other Writs according to their case, given to Parsons, Vickars, and Wardeins of Chapels, Provosts, Wardens, and Priests of perpetual Chauntries for Lands in frankalmoigne, as well as to Parsons of Churches, or Prebends.

Chap. II.

Of a Writ of Partition, Nuper obiit, *and a* Quo jure.

This is the nature of an assise, and *Juris utrum*. Those that follow are either a *Partitione faciendâ*, *Nuper obiit* (which doth lye between privies in blood) or a *Quo jure*.

Lit. 53, 65, 72. A *Partitione faciendâ* lyeth between tenants to compel partition to be made,

Lit. 98. but not between Joyntenants, or Tenants

5 E. 3. *partit.* 11. in Common, yet partition made there by assent between them is very good, but the husband

husband of one of the co-pareeners coming to bee Tenant by curtesie, such a Writ lyes for the other Copercener against him, because hee commeth in of the state of his wife, as pos for him, against the others. There- 1 H. 7. 5.
fore here for equality of partition, things 11 H. 4. 5.
that otherwise cannot, may be granted 28 H. 6. 2.
without deed: As a rent, reversion, seignio- 21 E. 3. 7.
ry, way, avowson, composition to present by 28 H. 8. Dy. 29.
turn, &c.

Statutes.

31 H. 8. cap. 1. Joyntenants, or Tenants in Common of an estate of inheritance, may bee compelled to make partition, and afterwards shall have aid to deraigne the warranty, paramount, and to recover for the rate as copercencrs (after partition) should.

32 H. 8. cap. 32. Joyntenants, or Tenants in Common for life or years, or where one or many hold for life or years with another, that hath the inheritance, may bee compelled to make partition. Such partition shall bee prejudicial to none but the parties, their Executors and Assigns.

Nuper obiit, lyeth against one privy in F. N. B. 197.
blood, that entreth after the death of the ancestor that died seised in demesne. And therefore being but to try the pri-

parity of blood, view, nor vouchee, and not neither is non tenure any plea.

F.N.B. 196. If one sue forth both for the tenure of the land, whom one challengeth common, he may see whether it ought to passe by assize or no.

Chap. 12.

Of Debt and Detinue, whereof a Writ of Annuity.

THis sorte of real actions. A personal action is that where damages are to bee recovered; for in the Common Law neither shall (a) any bee the Plaintiff recover damages, (b) for damages lye but in personal and mixt actions, not in real, as Dower writs of Entry, sist disseisin, Ayell, Cosinage, &c. for in theis damages are given by Special statutes, which being but once sufficed, or but against one, is gone for ever, and against all. As if the Creditor bee made an Executor to his debtor and once administer, or take to wife one of the Executors of his debtor, shee having administred before the action of debt is gone for ever. So if two bee bound in an obligation to a feme sole and after shee taketh one of the obligors to husband, the whole duty is extinct.

(a) 22 H.6. 27.
(b) Br. Costs 29.
21 E. 4. 3.
11 H. 4. 83.
8 E. 4. 3.
21 E. 4. 23.
16 H. 7. 4.

Executors bringing an action, must be

it in all their names, as well of those that refuse administration, as of the rest. But an action may not be brought onely against those that do administer. 32 H. 6. 25.

Statutes.

9 E. 3. cap. 3. Stat. 1. In a writ of debt brought against divers executors, they shall have but one essoine before appearance, and one after appearance. He or they that do first appear in the Court at the grand distress, shall answer to the Plaintiff, and the Plaintiff (if it pass for) shall have judgement and execution of the goods of the Testator against all named in the writ, as well as if they had all pleaded. In personal actions ensuing in respect of a possession in Common Tenants in Common are in all respects as Joyntenants, for they must joyn in an action of Trespass, for a trespass done upon their ground: in an action of account, against the Bailiff of a wood, and if one of them dye, the survivor shall have an action of the whole. So if the Tenant for life, the reversion to two sisters commit waste, one sister dyeth having issue, and the Tenant commit waste again, the issue and her Aunt shall joyn in an action of wast, and the Aunt sole recover treble damages for the waste done in her sisters time. 22 H. 6. 12. 38 E. 3. 7. 45 E. 3. 3.

In personal *pracipes*, damages onely shall be recovered where the thing cannot be had: for (a) damages shall not be reco- (a) 1 E. 5. 6.

vered in a Writ of Detinue, if the thing it
(b) Br. Detin. 48. self may bee delivered, damages (b) I say, to the value of the thing demanded: but damages for the detaining shall.

Personal *præcipe quod reddats* **are debt and detinue.**

Debt, when any thing is due upon a contract.

(a) 50 E. 3. 16. 11 H. 7. 5. **which if it be** (a) **money due from one to another in their own right, is in the** *Debet* (b) 50 E. 3. *ibid.* **and** *Detinet*, **otherwise in the** *detinet* **only.** As in debt, for the rent (b) of Wheat, and Hens reserved upon a lease for years, or of (c) 19 H. 8. 8. any Chattel, quick or dead, in debt (c) by (d) 10 H. 7. 5. or (d) against an executor for rent, upon (e) *ibid.* a lease of Land, though it bee behinde after the Testators death, or (e) upon a former recovery of debt or damages against 15 El. Pl. 441. executors, or for arrerages found in an action of account brought by them, for all is in the right of their Testator. But against an heir upon an obligation, &c. of his ancestor, it lyeth in the *debet* and *detinet*, for the (g) 47 E. 3. 33. assets which hee hath in his own right, maketh it his proper debt. So for an (g) Abbot or Prior upon an obligation of the predecessor, and though hee bee behinde himself onely, and against husband (h) and wife (h) *ibid.* upon a recovery of debt and damages against the wife whilest shee was sole.

Statutes.

Magn. Chart. cap. 8. The pledges shall

li be

bee free so long as the principal debtor is sufficient. And answering the debt, shall have the Lands and Rents of the principal till they bee satisfied.

1 Mic. 2. cap. 12. No Wardein of the Fleet shall suffer any prisoner in execution to go out of prison by mainprize, bail, baston, without making gree to the party, unless by Writ, or other commandement of the King, upon pain to lose his Office, and the party to have a Writ of debt against him.

33 H. 6. cap. 10. Every obligation taken by a Sheriff or his ministers by colour of their office, of any person in their Ward by course of Law, shall bee by the name of their office, and upon condition that the prisoners appear at the day and place mentioned in the Writs, Bills and Warrants, taken in any other form, it shall bee void.

32 H. 8. cap. 37. The Executors or Administrators of him that hath any Rent or Fee-farm in Fee-tail, or for life, shall have an action of debt for the arrerages, in the Testators life time against the Tenants that should then have payed it, or may distrein (and make avowry upon his matter) in the lands so long as they remain in the possession of the said Tenant, or of any claiming onely from him.

A huf-

A husband seised of any such estate in any rent or fee-farm in his wives right, shall (after her death) himself, his Executors or Administrators, have the same remedy for arrerages due in her life.

So of him his Executors and Administrators, that hath a rent or fee-farm during another's life, and *cesti qui vi*, dies the rent being unpayed.

Prerogative.

10 *El. Pl.* 321. **When any of the Kings goods come into a subjects hands,** whether by matter of record or enfait, so as hee is accomptant for them, **his land all times after is chargeable for the same,** and subject to the Kings seisure, **into whose hands soever it come,** whether by descent, purchase, or otherwise.

Statutes.

34 H. 8. cap. 2. The land of the heirs of high Collectors of any Task, Subsedy, or Lone, and of the receivers of Courts, shall be chargeable therewith, as well that the heir hath by descent in fee-tail, as in fee-simple. And also that that is given him by the Collector or Receiver covenously, and thereupon the heir may have an action of debt against the Executors and Administrators of his Ancestor, wherein no essoin, protection or wager of Law is allowable. And his execution of the goods of the Ancestor, being

being in their hands at the time of the acti-
on brought.

31 Eliz. cap. 4. The lands, profits, and
tenements of every accomptant, or of
him that receiveth money for the Queen,
or her Successors, to bee imployed to the use
of the Queen, shall bee extended (in the
nature of a Statute Staple) for the payment
of the arrerages. Or the Queen if hee do
not satisfie within six months after the arre-
rages found, may sell his land, and the party
may have the surplusage to bee delivered
unto him, by him that received the money
upon the sale, without further warrant; this
sale to be of any land, whereof it is found
by inquisition, that the accomptant taketh
the profits; which inquisition, if it bee not
true, the party grieved after travetse of the
office, and that found for himself, shall
have his land again without any petition,
livery, or ouster lemain. If any such buy
land with the Queens Treasure, since the
beginning of her Reign, and pay not the
arrerages as before, the Queen shall seise
and retain the land according to the rate that
the party had it. This sale extendeth not to
those officers that have used to disburse
the arrerages about their charge, or offices
which concerne, excepe the Queen com-
mand present payment to bee made, and
then they shall have five moneths as be-
fore.

This Statute extendeth not to the accomp-
tants

tants, whose yearly Rent, or whole Rent from the beginning exceedeth not CCCl. nor to Sheriffs, Escheators, Bayliffs of Liberties. Also the Sureties shall bee ratable according to their abilities charged for the surplusage only which remains not satisfied by such sale of the Lands of such Officers.

39 Eliz. cap 7. The former Statute of 13 of *Eliz.* shall extend to sales to bee made after the death of the Accomptant or debtor, and to an accompt made, or debt known within eight years after his death.

And none shall bee taken a debtor but such officers and accomptants, (in this act mentioned) as upon their accompts finished (all reasonable petitions being allowed) shall remain debter upon the foot of the accompt.

After one year after the accompt made or known (all reasonable petitions allowed) the Queene may by her Letters Patents sell so much as shall suffice to satisfie it, if any land which hee had at any time since 2 April 13 *Eliz.* or which otherwise are to be sold by the intent of 13 *Eliz.* The over-plus, if any bee, shall bee re-delivered without petition or Fee. Every such sale shall bee as good as if the party himself had made it for money, or other valuable consideration by bargain, and sale, deed enrolled, feoffment, or recovery with voucher. And shall barre the party and his heirs, and all claiming under him, after he

shall bee debtor or person accomptable, and of whom hee might have barred by any recovery, and all whose lands are to bee sold to the intent of 13 *Eliz.* And shall bee good against the Queen and her Successors, and all claiming under them for any charge or incumbrance to the Queen or her Successors by the same.

Provided, it shall not avoid any Lease by the Queen in other sort than it should at the Common Law; if the Queen were named.

This act and 13 *Eliz.* shall extend to under Collectors of Tenths and Subsedies of the Clergy, shall not impeach any assurance made before this Parliament, *bona fide* nor any lease of 21 years, or three lives whereupon so much yeerly Rent shall bee reserved yearly payable, as hath been within 21 years before, nor customary estates made according to the custome.

Of this nature is a writ of annuity, which lyeth for him that hath an annuity (a) in Fee for life, or though it bee but for years, he (b) **it money or other things, as** corn, **bread, &c. And is in the** *debet* **for** (c) **all**: that is to say, for any other thing as well as for money, **not in the** *detinet* **contrary to an action of debt, Detinue when any thing is withholden**, which is called *De catalis reddendis*: if it bee for writings, it is called, *De chartis reddendis*.

(a) F.N.B. 152. a.
(b) F.N.B. 152. b.
(c) F.N.B. 152. a.
Old N.B. 62.
Old N.B. 65.

CHAP.

Chap. 13.

Of an Action of Account, and an Action of Covenant.

Personal *præcipe quæ faciats* are an action of Account, and an Action of Covenant.

F.N.B.116.p. An action of accompt which is to an accompt to bee made: As if one bee made a Bailiff of a Mannor, &c. then it is against him as Bailiff; if Receiver of his Rents, Debts, &c. then as Receiver: if both Bailiff and Receiver, then as Bayliff and Receiver.

Statutes.

Marleb. cap. 23. Attachment gives an action of accompt against Bayliffs that withdraw themselves and have no lands nor tenements to bee distreined by.

Ebetim. 2. cap. 11. Hee to whom the accompt is to bee made, may assign Auditors to take it, who may immediately commit to the next Gaol the accomptant (if hee be found in arrerages) till hee fully satisfie: whereupon the accomptant finding himself grieved, may bring the matter by *Scire facias* before the Barons of the Exchequer.

Prer

Prerogative.

The King may have it against Executors. And so can no other man. *Lit.* 118.

An action of covenant which is for a covenant, that is to say, an agreement by deed to be holden.

CHAP. 14.

Of Writs where the peace is not broken.

PErsonal *Si fecerit te securum* are all things done without force, or where force is coupled with it.

Of those without force, some go not for a breach of the peace, others do it.

Those that break not the peace, are these that follow.

Rationabili parte bonorum, for the wife and children of one deceased to have their part of the goods.

Quare maritagii for wardein in Knight Service, when the heir at full age refuseth to attorne him for his marriage: And therefore there in the writ are no words of the heirs intrusion into the land. F.N.B. 140. f.

A writ of forfeiture of marriage is to recover the double value against such an heir marrying himself within age, without the Lords assent, and at full age putting out the Lord. F.N.B. 141 g.

Entre-

Entrusion of ward, when the heir of land by Knight service entreth, and putteth out the Lord, whether during his nonage or after his full age, if the heir both entrude, and deny the value of the land also, then this writ of Intrusion of ward may be brought for both.

F.N.B.140. *Ejectione custodiæ* **for any garden by** Knight service or soccage, **against a stranger, ejecting him of the land or body of the heir, or both.**

F.N.B.197. *Quare ejecit infra terminum* **for lesse for years, against the Feffee in Fee, or for life of his lessor,** for in such a case an *Ejectione firmæ* lyeth not against the Feoffee of Lessee for life, because hee is not the person that doth oust him, but his Feoffor. And therefore was this writ devised. **And by the terme it self shall bee recovered, if** bee not past, as in an *Ejectione firmæ* the contrary after.

So is the Law now adjudged. **Trespass upon the case of things done against the peace, as Assumpsits for an assumption to bee performed, and such like, and this lyeth not against Executors.**

38 H.6.9. **Here, and in all other actions of Trespass upon the case, the writ must comprehend all the matter of substance,** which is traversable as clearly as the count, unless it bee the day, quantity of the land, such like.

CHAP.

CHAP. 15.

Of Treſpaſſes upon the Caſe, againſt the peace, deceit, and conſpiracy.

The other that brake the peace, but not vi, are called treſpaſſes againſt the peace.

And of this kinde ſpecially are an action of deceit and conſpiracy in the nature of ſuch a treſpaſs. An action of deceit is upon any deceit committed, where if he upon a vain ſummons in a plea of Land, whereby he loſeth the Land by default, or ſuch like, it muſt be brought during the life of the Summoners, but not when all the Summoners and neighors be dead. 22 H.6.47.

In a writ of deceit the Plaintiff ſhall recover all that he hath loſt. As if it bee brought upon a recovery in a *quare impedit*, then damages: if in a formedon then the Land onely, but no damages, for hee loſt none in the formedon before. 33 H.6. 10.

Conſpiracy in the nature of a treſpaſs upon conſpiring by many to prejudice a man wrongfully. As if men conſpire to indite one, becauſe hee arreſted not a felon that paſſed by the Town of *M.* And thereby they cauſe him to bee indicted and amerced in the Leete of *R.* and *F.* and ſo bee F.N.B.116.

taken and imprisoned; for this amerciament, till hee bee thereof acquitted in the Leet. Or if men affirm and say to one A. that hee hath right to such Land, and procure him to sue B. tenant of the Land, whereby B. is compelled to sell other of his Lands for defence of this. Or if men procure one to be endited for hunting in a Park, whereby hee is taken and imprisoned, and put to ransom, till hee there acquaints himself with the trespass.

CHAP. 15.

Of Trespass whereof Parco fracto, rescous, and Ejectione firmæ.

Such are those without force: com- With force is an action of Trespasse, for a trespasse done against goods, or upon his Land. And so it is of a bodily trespasse, as battery, &c. But maime and rape it is called an appeal.

F.N.B. 239. d.

F.N.B. 85. f. 86. a.

action of Trespass brought in the Court- wherein by plaint in the Court manner, hundreds, or County Court, writ in the County Court

F.N.B. 239. d.

it to be done by force and arms, for *Supersedeas* lyeth, shewing that a Trespass *Quare vi & armis* shall not be den in a lower Court than before the

other Justices by his commandement. And therefore no *Capias* lyeth there, either 3 H. 6. 54.
a processe or execution, but in Courts of Record onely.

Statutes.

Marleb. cap. 18. A writ of Trespasse is given to the Successors (in religious houses) for goods taken away from the Predecessor, whether hee commenced action in his life, and died without Judgement, or though he commenced no action.

And likewise to recover their own lands against intruders in time of vacation, wherein damages are also given.

Marleb. cap. 4. If the Lord distrein for his services when none are due, yet hee shall not bee punished by fine and ransome, but onely be amerced.

Westm. 1. cap. 20. Trespassors in Parks and ponds attainted at the suit of the party, besides making large amends according to the Trespass and fine, at the Kings pleasure, shall have three years imprisonment, and finde good surety not to commit the like trespasse. And if hee cannot finde surety, hee shall abjure the Realm. Being a fugitive, and having no Land nor Tenement, whereby to bee justified, hee shall be proclaimed from County to County, and if hee come not thereupon out lawed, if none do

ſue within a year and a day, the King ſhall have the ſuit.

5 Rich. 2. cap. 7. None ſhall make entry into Lands or Tenements, but where entry is given by Law. And in ſuch caſe not with ſtrong hand, nor multitude of people, but in peaceable manner.

Hee that is convict of the contrary ſhall bee impriſoned, and thereof ranſomed at the Kings will.

15 Rich. 2. cap. 2. At all times that ſuch forcible entries bee made, and complaint thereof cometh to any Juſtice of Peace, hee ſhall take ſufficient power of the County, and go to the place, and if hee finde any that hold ſuch place forcible, after ſuch entry made, they ſhall bee taken and put into the next goal, there to abide, convict by the Record of the ſame Juſtice, till they have made fine and ranſome to the King.

8 H. 6. cap. 9. The like for them that make ſuch forcible entry into lands, or other poſſeſſions, or them hold forcibly.

And whether the parties bee preſent or voided before the Juſtices coming, yet they ſhall inquire of the matter by the people of the ſame County in ſome convenient place, and ſhall cauſe the Tenements ſo entred or holden to be reſeiſed, and reſtore the party (ſo put out) into full poſſeſſion.

The party put out or diſſeiſed in this manner, ſhall recover treble damages, againſt the diſſeiſors, or any feoffee coming in by fraud.

31 Eliz.

21 Eliz. cap. 11. No restitution upon an indictment of forcible entry, or holding with force, shall bee good, where the party hath been in quiet possession three whole years next before the indictment, and his estate not ended.

Merton. cap. 6. A lay man ravishing, or marrying a Ward within fourteen years of age shall bee imprisoned, besides losse of the value of the marriage.

Westm. 2. cap. 35. One that hath no right, taking away the Ward, shall bee imprisoned two years, though hee restore the childe not married, or satisfie for his marriage. Not restoring him, unmarried, or not bee able to satisfie for his marriage (in case hee have married him) hee shall abjure the Realm, or have perpetual imprisonment. The form of the writ, both when the heir is in the same County, or carried into another, is there set down.

If the defendant there come not upon the distress, hee shall bee outlawed.

The plea shall proceed, though the heir dye, if the Plaintiff dye before the plea determined, &c. a resummons shall bee against his executors or heirs (if the executors have no assets) to satisfie the value of the marriage.

Special actions of Trespass are these that follow. F.N.B. 109.

Departure for taking a distress of beasts, and other things distreined for damage

K k 2 wo-

have ſeiſant, or for rent and ſervices behind, out of the pownde, whether common pownd or other place that is a lawfull pownd, and whether hee that ſo brake the pownd be proprietor of the beaſts, or no. And this lyeth for him that diſtreined, not for him whoſe the cloſe was, where one diſtreineth and puteth the beaſts by licence into his friends Cloſe, for it is not the pownd of the owner of the ſoil, but of him that did diſtrein, and the other ſhall have an action of Treſpaſſe, *Quare clauſum freyit.*

F.N.B.101.c. F.N.B. 102. f. Ne iſcons ſhe taking ſuch a diſtreſs ſhall before it be impounded. And here the party muſt needs have poſſeſſion of the beaſts, or things ſo reculled, for if hee be diſturbed before hee do attach or diſtrein them, a writ of reſcous lyeth not, but an action upon the caſe.

(a) F.N.B. 220. b. (b) F.N.B. 220. f. *Ejectione firme* when (a) leaſee for yeares of land is ouſted, be (b) it by the leſſor, or a ſtranger, where the term is ſet ſhall be recovered, if it be not paſt, as in a *Quare ejecit infra terminum* before.

CHAP. 17.

Of Appeals that touch Life.

(a) Lit. 116. (b) 8 El. Pl. 476. THeſe are the Common pleas, an appeal that concerneth life is the parties (a) private action, proſecuting for (b) for the Crown in reſpect of a felony

bee it (d) petty Treason, or other felony whatsoever. But for (e) high Treason no appeal lyeth.

(d) 33 H. 8. Dy. 50.
(e) 33 H. 8. D. Stamf. 50.

Appeals of the death of a man are given to the heir of the party slain, for the husband shall not have an appeal of the death of his wife, but her sonne. So the eldest brother of the whole blood shall have the appeal, and not the elder brother of half blood. But the elder of the whole blood shall.

7 E. 4. 19.

Statutes.

Glocest. cap. 9. An appeal of the death of a man must bee brought within the year.

Magn. Chart. cap. 34. A woman shall have none but onely of the death of her husband.

1 E. 6. cap. 14. Endictment or appeal good in the County where hee dies, though the poisoning or stroke were in another.

3 H. 7. cap. 1. One acquitted upon an endictment of murder, or manslaughter, or as accessary shall go at large till the year and day bee passed, within which time no appeal may bee brought (if no Clergy be had before) and all advantages therein saved, as if hee acquitted had not been.

So against the accessories, though the principal were attainted at such suit of the King.

CHAP. 18.

Of writs of right Patent.

Old N. B. 12. A writ of right patent.
F.N.B. 85. Of Trespass.
F.N.B. 2. f. of a writ of right patent.
F.N.B. 86. Of Trespass viecontiel.

THus far of original writs, Commissional are those which are not returnable, but determinable before the parties to whom they are directed. And are but in effect commissionary, or meere commissions: of the first sort are those that give authority to a Court baron, to hold plea where the suitors are the Judges, not the Sheriff or steward. These are a writ of right patent, or a *Justicies*. In both which the lower courts is holden, as in those that went before, the pledges as before, count as in them, and the same both processe that is in the writs original of that nature. As in a writ of right patent, a *Praecipe* in the nature of a grand *cape*, and *petit cape*. Trial by battail, or grand assise, &c. in Justice or viecontiel, writs of debt, accompt, &c. Summons of Trespass, &c. attatchment, but not a *capias* in any case, for that lyeth onely in a Court of record. Also many actions of one nature may bee joyned in one *Justicies*, with several *Praecipes*. So in plaints, bills, &c.

35 H. 6. 5.

(a) F.N.B. 1. b.
(b) F.N.B. 30.
(c) 14 E. 3. dr. 31.
(d) ibid.

A writ of right patent is a writ for (*a*) meer right of Tenements holden of a common person, as land, (*b*) avowson, or rent (*c*) service: but not (*d*) rent charge, rent

mesne, or a (e) Common, to be brought in the Lords Court of the Manour. But (g) if he hold no Court, or otherwise (h) yeeld his Court to the King for that time, at the prayer either of the Tenant or Demandant, then it may be in the Kings Court with this clause, *Quia B. capitalis dominus nobis inde remisit curiam.*

(e) F.N.B.1.b.
Old N.B.1.
(g) F.N.B.3.e. & 8 a.b.
(h) F.N.B.2.f.

And this must there by what service the land is holden. The writ remaineth as before, with the party himself. So doth no other writ original. If one privy in blood not pass the third degree, counted after the death of the Ancestor that dyed in demains not seized. As where a man seised in fee, and dyeth in the life of the Tenant, having many coheirs, and after that Tenant for life dyeth, and one of the Copercenors entreth into all, or where the Ancestor is disseised and dyeth, and one copercener entreth into all, there such a writ of right patent, for the other copurcener, or for the elder progner, if the younger enter into all, is called a writ of right *De rationabili parte*. And therein the grand Assize, nor Battail shall not lee joyned for the privity of the blood, nor view nor voucher lyeth, neither is non tenure any plea, for it is to try the privity of blood, as a *Nuper obiit* that went before.

F.N.B.1.i.
F.N.B.4.
Old N.B.10.
F.N.B.9.b.
Old N.B.10.
Ibid.
8 El.
F.N.B.9.b. It lyeth also where the Ancestor dyed seised.
F.N.B.9.b.
Old N.B.10.
F.N.B.9.g.
Old N.B.10.
F.N.B.9.g.
F.N.B.9.n.
F.N.B.197.c.d.
7 H.6.8.

A woman that hath received part of her Dower shall have a writ of right of Dower patent for the remnant, wherof she is to be endowed, wherein the same things
F.N.B.6.

things also to bee observed that were in writs of Dower, which I did leave before.

CHAP. 19.

Of Iusticies.

A Iusticies is a writ that giueth to a County Court power to hold plea. This therefore is called a Vicecomitibus, of this sort are,

F.N.B. 184. b. 1. An assise of petty nuisance is taken by writ, or such like, is levied to ones preiudice.

All of them are comprehended in these verses:

Vice Ca gultum ces Indicium
Fab, far, porta domus, vir, gur, nurus ovile:
Et pons, iraduitur hæc vicecomitibus.

F.N.B. 148. 2. For admeasurement of things, as admeasurement of Dower by the heire, when his garden or himself endowed the wife in his nonage of more than the one. But by this Writ she shall have no new land assigned to her in Dower. But onely there shall bee taken from her so much of the land as amounteth above the third part of the land, whereof shee ought to bee endowed.

Ibid.

F.N.B. 125. b. & d. Admeasurement of pasture by a commoner whom another commoner surcharged by putting in more beasts into the Common than hee should, whether the Com-

Common bee appendant or appurtenant, ſo
be to a certain number, wherein all the
Commoners as well thoſe that have not
ſurcharged, as thoſe that have, and alſo the
Lord himſelf ſhall be admeaſured. But
it will not for the Lord againſt his Tenants
ſurcharging, for hee may diſtrein the ſurplu-
ſage for damage feſant. And as ſome ſay,
may have an aſſiſe, for it is a diſturbance of
his profit of his ſoil. Nor for the Tenant a-
gainſt his Lord ſurcharging, but hee ſhall
have an aſſiſe of common.

Dowers.

Weſtm. 2. cap. 7. A gardein may have a
Writ of admeaſurement of Dower, and the
heire alſo at full age, if the gardein fallow
it unduly.

In Writs of admeaſurement both of
Dower and Paſture after the great diſtreſs,
Proclamation ſhall bee made two County
dayes, whereupon if the party come, the plea
ſhall proceed: if not, admeaſurement ſhall be
made in his default.

Weſtm. 2. cap. 8. When the ſame party
after admeaſurement another time ſurchar-
geth, a Writ to enquire if that ſecond ſur-
charge ſhall go out either judicial, if the
former admeaſurement were before the Ju-
ſtices, or otherwiſe original out of the
Chancery. And the beaſts ſurcharging the
paſture, or their value, ſhall bee anſwered to
the King.

F.N.B.77.a. 3. A *Nativo habendo* for the Lord that hath an inheritance in any villein, but not an estate for life or years, for this Writ is in his nature a Writ of right to recover the inheritance of his villein, when his villein departeth away from him. And here if the defendant plead that he is free, the Sheriff cannot proceed.

F.N.B.77.b.

F.N.B.77.c.

Old N.B.73. 4. *Rationabilibus divisis* for that Lord whose land or waste hath by little and little been encroached upon within time of memory until now, by a Lord who seigniory adjoyneth in another ville, against the Lord so encroaching. But if the encroachment be at once, whether now or before time, there an assise of novel disseisin lyeth and not this Writ.

Ibid.73.& 74.

F.N.B.66.c. 5. *De homine replegiando*, for one imprisoned, or in prison detained where he shall not (a) As being bayliable, or claimed as (a) a villein, or in (b) ward, where in deed he is frank, out of ward.

(a) F.N.B.66.f.

(b) F.N.B.67.

F.N.B.68.d. 6. A replevin for goods or chattels distrained, which according to the nature of the plea ministred by the parties, groweth to be either a real or personal plea, as upon property claimed then is it personal, if the Defendant avow the taking, for services Rent behinde, &c. then it becommeth real &c. and as strong as a *præcipe quod reddat*, in as much as hee is to have a return. therefore hee shall in that case have aid before any plea pleaded, as in a *præcipe quod reddat*.

4 H.6.30.

F.N.B.70.a.b. And this may be both by Writ and plaint

plaint in any Court Baron, as well as in the County Court. And being by plaint, though in the County Court, it shall not serve if any thing touching the freehold come in question, as if the Defendant avow for damage feasant, the Plaintiff justifieth by reason of Common of pasture. F.N.B.70.b.

Upon the pluries not served by the Sheriff, his power is determined, and the parties shall plead in Bank. 2 H.7.6.

Statutes.

Marlb. cap. 21. The Sheriff may replevin beasts not onely without, but within a liberty also, if the Bayliff of the liberty will not.

Glouc. 2. cap. 2. The Sheriff or Bayliff shall take pledges of the Plaintiff not onely *de prosequendo* before they make deliverance of the beasts, but of returning of the beasts if a return bee adjudged, hee that taketh pledge otherwise shall answer the price of the beasts. Upon a return awarded to the Defendant, the writ *De returno habendo* shall have this clause (that the Sheriff shall not deliver them without writ, wherein mention shall bee made of the judgement.) And thereupon the Plaintiff (if he will) may have Judicial writ to the Sheriff to deliver them the beasts.

Upon a return awarded, after which if a return another time be awarded, there shall be no more Replevin. And if upon his default the second time, or otherwise the Defendant

fendant bee adjudged to have a new return, the Iffues shall remain irreplegiable.

4 Deputies to make Replevins

1 Aug. 28 h. and 28 a. rep. 12. Every Sheriff of a Shire (being no City) shall at his first County day, or within two months after receit of his Patent, proclaim in the Shire Town four Deputies at the least, dwelling not past twelve miles one from another, which in his name shall make replevins as the Sheriff might do himself.

F.N.B.151.b.
Ibid.123.a.
Ibid.123.f.
Ibid.135.a.
Ibid.148.b.
Ibid.152.b.
Ibid.119.g.
Ibid.138.b.
Ibid. 117.b.
Ibid.145.e.
Ibid.85.f.86.g.
In ibid.86. For they are as a Commission in effect. And the Sheriff may determine them by Enquest, according to the course of the common Law.
F.N.B.110.b.

7 Many of the actions that went to lye both for Real things to be done, as *Consuetudinibus & serviciis; scita ad nocumentum. Quod permittat; mesne. Dower. de nihil habet*: and also personal actions, as annuity, debt, detinue, account, quare impedit, trespass, &c. what Courts they well be brought in the County by writs, as to bee removable in the Common place.

Ibid.

CHAP. 20.

Of meer Commissions.

MEer Commissions are these that follow: Being all of them to be directed to choice persons, such as the King trusts.

Oyer and Terminer to hear and determine upon some heynous matters committed, as rebellious assemblies, insurrections, and such like. And these are called Justices

Statutes.

1 E.3.cap.3. It ſhall bee granted onely to Juſtices of the one Bench or other, or to Juſtices errants.

In theſe and ſuch like Commiſſions is properly a Writ of Aſſociation, and *Si non omnes.*

Aſſociation is a Writ for other to bee aſſociate into their Company, as fellow Juſtices together with them, and may bee directed to the Juſtices themſelves to aſſociate them, or to the parties that ſhall bee ſo aſſociate to joyne their aſſociation. That (*a*) to the party is parent. The (*b*) other to the Juſtices to aſſociate him is alwayes cloſe.

Si non omnes is a Writ for the reſt to proceed, although the other come not. To be directed as well to the party to be aſſociate as to the other Juſtices. Parent (*c*) to the party, cloſe (*d*) to the Juſtices.

Ad quod dammum to enquire what hurt it may be to the King or Country, or any other for the King to grant ſuch or ſuch a thing, as a licence to alien in mortmaine, or to alien lands holden of the King in chief; or to grant liberties to any City or ſuch like.

Perambulatione facienda to enquire of the bounds of two Seigniories or Towns, where an encrochment by little & little is ſuppoſed to have bin made. And this muſt

(*a*) F.N.B.111.b.
(*c*) F.N.B.111.d
F.N.B.185.a.in an aſſiſe.
(*b*) F.N.B.111.d
(*c*) F.N.B.186. ab.
Fit.Nat.B.111. a.
(*d*) F.N.Br.221

Old Nat.Br.74.

must be by the mutual assent of both the Lords. But if such encroachment were at once, whether now or heretofore, an assise of novel disseisin lyeth, and not this writ.

CHAP. 21.

Of Plaints.

Plaints are of two kinds, it followeth to speak of Plaints and Bills. Plaints being in such Courts as hold plea without original writ.

A plaint is in matters that concern Common pleas.

22 Ass. pl. 64. Br. Jur. 98. 34 H. 8. 15. Ibid.

A plaint of Trespass brought in a Court Baron, whether Mannor, Hundred, or County Court, shall not proceed if Freehold come in question. But a suit by writ in the County Court may. Therefore in such case upon a plaint in the County Court, the party hath no remedy, but a writ of Trespass vicontiel; and thereby the Sheriff may determine the issue, though the Free-hold come in debate. But that is no remedy in other Court Barons.

CHAP.

CHAP. 32.

Of Bill.

A Bill is in pleas of the Crown. As an appeal of felony, mayme, &c. may be by Bill but it any one Coroner of the Shire, as well as by writ original, finding first sureties to the Abettors. *Stamf.* 64. *Stamf.* 55. 4. *Stamf.* 64.

One whose attendance is necessary in any Court, as the officers and Attornies there, shall sue and be sued in form of plaint, without writ original, which is called a Bill priviledge. But albeit the Cook or Butler of a Judge, or other officer of a Court shall have their priviledge if they bee sued elsewhere, yet a Bill lyeth not against them: But against the Officers and Attornies it doth, for they are members of the Court, and their attendance necessary. And they shall bee fore-judged of their office, if being demanded to do them, they make default. But an Attorney in the Kings shall not be sued by Bill, for no Attorney is there of record, nor his presence necessary. Otherwise it is in the Common place. 6 E. 4. 3.

Chap. 23.

Of a Quo warranto.

Prerogative.

10 H. 7. 14. THe King hath a speciall writt of intr for trying of the right of franchise usurped upon him, called a *Quo warranto*: and is to bee brought before the Justices of Oyer. Therefore here the allowance of a franchise, before them, bindeth the King. Otherwise it is upon a lure in the common place.

Statutes.

Quo warranto in Justices circuits. 18 E. 1. A Statute of *Quo warranto*. Pleas of *quo warranto* from henceforth shall bee pleaded and determined in the circuits of the Justices.

18 E. 3. Stat. of *Quo warranto*. A publick *proclamari fac*, shall bee awarded to those that claim liberties, to know by what warrant they claim them, wherein they shall have a warning of forty daies. The party that claimeth liberties being before the King, it shall not bee in default before any Justices of their circuits. And being impleaded before one of two Justices, the same Justice before whom hee is impleaded shall

shall save him harmless before the other. If he come not at the day, the liberties shall be taken in the Kings hands in name of a distresse, and when they appear, bee replevied upon their demand. In which replevins they shall answer immediately.

If their Ancestors died seised, then the King shall have a summons for them to appear before the King, or his Justices of assise at which day if they come not, nor bee essoigned before the King, and the King do stay longer in the same Shire, such order shall bee taken as in the circuits of the Justices. And if the King depart from the same Shire, they shall bee adjourned unto shorter dayes, and have reasonable delaies according to the discretion of the Justices, as it is used in personal actions.

CHAP. 24.

Of Offices for the King.

Here are the suits that every one may have. Enquiry for the King in matter for the King is termed by the name called an enquest of office, when the enquiry bee by officers themselves, as Shiriffe, Eschetors, Coroners, &c. *virtute officii*, or *virtute brevis*, or commission to them directed. And here the inquest of twelve is not of necessity required, but may be sometimes more or less. F.N.B. 170. c.

21 E. 3. 2. **An enquiry is an office or presentment. An office which findeth matter to entitle the King to some possession,** for an office is a title for the King, but finding but for a common person, it is but an evidence.

3 H. 7. 3. If such an office bee found for hereditaments, and the King entitled by matter enfait, that is to say, by no other record but that onely, as if the office finde that *J. S.* the Kings Tenant died seised, the party may either traverse, to say, *J. S.* was not seised, or confess and avoid it by saying, that himself was the Kings tenant, and disseised by *J. S.* and so *J. S.* died seised being in by disseisin, &c. And this is called a *monstrans de droit*. But if the office entitle the King by matter of record, as that *J. S.* was attainted of Treason, and seised of certain Lands, there onely a petition lyeth to the King, because this is a double matter of record, and therefore neither can the party traverse it by denying *J. S.* to bee so seised, nor by his *monstrans de droit*, to shew that *J. S.* disseise him, &c. or that hee enfeoffed *J. S.* upon condition, and that *J. S.* brake the condition before the attainder. All this is to be understood so long as the Record of the attainder continueth in his force. But the party may traverse the attainder, well enough, as to say, *nul tiel attainder*, that there is no such attainder, and upon that being found for him, hee shall have the Land without being driven to his petition.

4 H. 7. 7.

vile not, and the reason is, because the office entitling the King by a matter of record, this title cannot be avoided, but by as high a matter, and not by the plea or allegation of the party: **upon as high a matter of record to avoid the office, as the office it self, a man may traverse it,** though the King bee entitled by double matter of record. As being found by office that *J. S.* was attainted of Treason by Parliament, and his Lands forfeit, and that hee was seised of 3. acres, whereby the King seiseth it. Now if another act of Parliament restore the heir to all the Lands whereof the ancestor was seised, and adnull the ancestors attainder, his heir shall have this by way of plea, without petition.

If the office bee for personal goods, the party may always have a traverse or plea 4 *E.* 4. 24.
matter unto it, and so have his goods again, **unless the escheto; have accompted** *Ibid.*
for them. And that though the office finde the Kings title to bee by matter of record: 34 *H.* 6. 5.
as that *J. S.* was attainted of felony or treason or outlawed in debt or trespass, and was 4 *E.* 4. *ibid.*
at the time possessed of a horse, or of such and such goods, wherein in truth the property was unto a stranger. That stranger may have a traverse.

The King upon office finding for him, if his entry be lawful, and the possessions to him at the time, is presently in possession as in wardship or eschete of land found 14 *H.* 7. 23, 25
by office: but an office finding that the Kings

Stamf. Prer. 54. tenant hath ceased, nor his tenant for life committed waste, vesteth no possession in the King, for his entry is not lawfull, but he is driven to sue a *scire facias*. So if an office entitling the King to things not manuel, that is to say, whereof no profit is to be taken from the with, until they fall, as a rent common &c. this vesteth no possession till the day. Also

14 E. 3. 11. 11 H. 4. 5. he shall be answered of all the meane profits from the time of his title. As upon an alienation in mortmain found by office from the time of this alienation appearing of record upon the Kings letters patents repealed for insufficiency from the very time of the grant.

4 E. 4. 24. 7 H. 4. 5. An Escheator here may finde offices *ex officio*, as well as *virtute brevis*, or *Commissionis*. But not of rape, rape of felony, or such high matter of record without warranty commaunde, and certification by way of record. These *virtute brevis*, or *commissionis* are returnable in the Chancery. The other properly in the Exchequer. But may also be returned into the Chancery.

Statutes.

36 E. 3. cap. 13. Stat. 1. No Escheator shall take enquests of office but indented between the Jurors and them, else they be void.

37 H. 8. cap. 20. Servitium officii not to finde an office of lands holden of the King of y. l. value or above, pain y. l.

8 H.

[illegible] cap. 8. Take enquests but of people impannelled by the Sheriff, and those enquests must be returned within a month after the taking. Pain 20 l. So of Commissioners.

[illegible] 6. cap. 7. Take enquest *virtute brevis*, but within a month after delivery of the writ, his fees are set down.

[illegible] 8. cap. 8. Made perpetual. 3 H. 8. cap. 5. Sit unless he have lands, &c. to the clear yearly value of 40 Marks. Pain 20 l.

Delay to take the verdict when the Jury agree, pain C. l. So of Commissioners.

See Escheator in three years again after the year ended.

[illegible] cap. 23. Stat. 1. A Traverse given to the party whose lands are seised by office for alienation without licence, or no age of the heir in Ward, it shall be returned into Kings Bench to be tried.

36 E. 3. cap. 13. Stat. 1. Upon a Traverse of *Ampliavit de droit*, the Chancellor may [illegible] that tendreth it) the Lands holden to farm, finding surety to do no waste.

[illegible] 6. cap. 16. They shall not be let to farm till the enquests returned, nor in a month after, within which time the party grieved may have the benefit of the former [illegible]

All letters patents within the month shall bee void.

18 H. 6. cap. 6. All letters patents made of Lands or Tenements before office found or returned shall bee void.

1 H. 8. cap. 16. The party shall have three monthes liberty after the office returned to render his traverse.

2 E. 6. cap. 8. Where an office is found for the King, hee that hath interest for years, or by Copy in the bond, or any rent, Common, office, fee, or any profits of whatsoever estate out of the Land, shall have them, though they bee not found in the office in such sort as they should, if no office had been at all. When Land is found holden of the King immediately, and that it should descend or come to an heir within age, which is, or ought to bee in the Kings ward, that heir within age may have a Traverse.

The party grieved may have a Traverse immediately or after, at his pleasure, when one is found heir, where another indeed is heir, or when one is found heir in one County, and another found heir to the same person in another County, or when one unruly is found lunatick, ideot, or dead.

The party grieved may have traverse or *Monstrans de droit* (and shall not bee driven to petition) when it is unduly found that one attainted of treason, felony, or *præmunire* is seised of Lands, whereunto another hath just title of an estate of free-hold. And

although

although the King bee intituled in such lands by double matter of record.

Upon every such traverse a *Scire facias* shall go out as in traverses or petitions before, and the defendant therein have the same advantage that they had in a *Scire facias* in a petition before.

In every traverse pursued by virtue of this act, whereby the Common Law, the party were driven to petition, two writs of *Scire facias* shall bee granted. After judgement upon a traverse sued by virtue of this act, if it appear by matter of record that the King hath a former title, the same shall bee saved unto him.

17 E. 3. *Escheat chart.* cap. 19. When the Escheator or Sheriff seise land into the Kings hand without cause; upon ousting of the Kings hands the party shall have the meine rents restored to him.

36 E. 3. cap. *De Escheatoribus.* If the Escheator by Writ out of the Chancery seise land into the Kings hand, and after upon inquisition no title is for the King to have the custody. An ouster lemain shall bee awarded for the party out of the Chancery.

Provided, that if any thing afterwards may bee found in the Chancery, Exchequer, or Kings Bench for the King, a *Scire facias* shall go out against the party. And if the King have right, it shall be answered of all the issues from the time of the Escheators first seising of the Land.

Traverse against any pretence not pleadable or allowable. Upon an office found of [illegible] offices, whereby the King is intitled to [illegible] liveries, that is to say, the lands delivered out of the Kings hands. But upon a petition [illegible] a special writ of commission, not a general one, to enquire of all wards [illegible]. Therefore here the heir is allowed [illegible] commissions following, of which in the nature of such commissions, viz. First for the finding of an office for the King, then for the having of the land out of the Kings hand. Those for the finding of an office are, 1. A *Diem clausit extremum*, *Inquisitio post mortem*, & *devenerunt*, to inquire what lands [illegible] holden of the King, and what of others, the ancestor was seized of the day of his death, the value, the day of his death, who is the next heir, and of what age.

14 E. 4 6.
F.N.B. 253. c.

The *Diem clausit extremum* is to be sued within the year after his death.

14 E. 4. 5.
6 H. 7. 14.

Statutes.

Stamf. prer. 52.

F.N.B. 235. c.

14 H. 7. cap. 12. Lands by ward in the Kings hand shall be let to the next friend of the infant, to whom the inheritance cannot descend, if they offer speedily after *Diem clausit extremum* in the Chancery to render till the Infants age, as other will without fraud.

F.N.B. 252.

The

The Mandamus after the petition, and then it must further be inquired who hath supersedeas. The Devenerunt in which the sheriffe vseth to return to the King, Dum fuit sana, mobis inquirendum, & Datum est nobis intelligi, upon defect in offices found by virtue of such writs or commissions, but these shall never go out upon an office found virtute officii. The plene upon seisure out of any land in those offices.

Malim inquirendum upon any other defect in the office, as if the office were insufficient (a) or uncertain, or the (b) land of greater value, than is found in the office, or held by other services, or the Tenant seised of other estate.

Datum est nobis intelligi, upon an office finding lands to be holden of any other person, when there is a record to prove that is holden of the King, but this writ shall not bee upon a bare surmise.

Those for having the land out of the Kings hand are an Ætate probenda, and sue of Livery. Ætate probanda is to enquire whether he be of full age, or not, before which time hee is not to have Livery.

Writ of Livery is after a perfect office, (for no livery shall be upon an insufficient office) finding a tenure in chief, whether by knights service or socage: and whether the heir then be within age, or of full age.

But hee that holdeth of the King by Knight service, but not in Capite, shall not sue livery. But because none can enter upon the King,

Stamf. 52. F.N.B. 253. E.
F.N.B. 253. E.
Stamf. ibid.
Fitz. ibid.
4 E. 4. 24.
F.N.B. 254.
(a) E. 4. 24.
(b) F.N.B. 255.
2 H. 7. 2.
F.N.B. 257.
Stamf. prer. 52.
F.N.B.
32 H. 8. Br. livery et ouster le main 62.

King, the heir (if hee were within age) when hee cometh to his full age, shall have an ouster le main, to have all the lands delivered to him at once by the King, which is called a livery, for if this bee sued, and no mention made of an avowrie, all shall bee released, and the King answered of all the meane issues. And a livery must bee entire, and not by parcels. The manner thereof is this, when the heir in the Kings Ward is of full age, hee shall have a writ out of the Chancery to the keeper of the privy seal, testifying that hee is of full age, and hereupon hee shall have a privy seal to the Chamberlain of the King to receive his homage. And when hee hath received his homage, hee shall have a writ from the Chamberlain to the Chancellor testifying that hee hath received his homage, and thereupon hee shall have a writ of livery.

4 E. 3. 25.
2 H. 7. 12.
F.N.B. 156.

Statutes.

28 E. 3. cap. 4. The rents given to them that sue livery when the rent day cometh how soon soever it come after the livery.

32 H. 8. cap. 46. The Court of wards erected to be a Court of record, officers appointed: a Master of wards that shall keep the Seal, an Attorney, a Receivor, two Auditors, two Clerks, a Messenger and an Usher.

All wards with their lands, &c. shall bee in the ordring of the Court.

They may sell and grant the King wards, &c

of their Lands during their minority, &c.

The same to pass by the Kings Bill assigned, which shall bee a sufficient warrant to the Lord Chancellor for the great seal.

They may (without the Kings Bill assigned) make good sales of underwoods, and appoint timber for necessary reparations of the ward lands, and make leases during their minority, &c.

Widows and the fines for their marriage are in the survey of this Court.

So are Ideots and their Lands, and the Court may let and set their Lands.

The grantee of the custody of Wardship of any of the Kings wards shall sue forth his patent within four months next after the assignment of his bill, else the bill and effect thereof to bee void.

Process shall bee made out of this Court against wards intruding upon their lands before livery, or custer remaine under the great seal.

With many other matters concerning the authority of this Court, and the offices thereof.

33 H. 8. cap. 22. The office of the M. of the livery united to the Court of wards.

A surveyor of the liveries added and appointed to be the second officer.

A Clerk of the liveries also added.

All liveries suing shall bee in the ordering of this Court.

None that hath Land over the clear yearly value of 5 l. (otherwise it is where the land

is

is under that value) shall have livery before inquisition or office, by the Kings Writ or Commission, which shall not pass out of the Chancery or other Court, without a warrant directed to them out of the Court of Wards under their hand.

They shall set rates for liveries, and appoint dates of payment, &c. and their Bill for livery shall bee a sufficient warrant to the Lord Chancellor.

A general livery may bee sued where the yearly value of the land exceeds not 10 l. but such general livery shall not bee without warrant from this Court. The patent for livery may bee sued forth within three months next after the assignment of the Bill by the King or his Court.

1 H. 7. 28. **Two being found heirs by one and the same title**, whether twinlings, that are males found heir by one self-same office: or divers men by several offices found heirs to the same ancestor, and by the same title (for if one office finde that the K. gave Land to A. and the heirs of his body; and that B. is his Cosin and heir, and another office findeth that the gift was in general tail, and that four daughters are his heirs. There must bee a Traverse and no enterpleading, for they claimed not by one ancestor and title) **the King shall not make**

5 E. 4. 4 **livery, till by enterpleader the truth be discussed at his full age that was found heir first**: for if A. of five years is found heir to the Kings Tenant, and after by another

office

is found his heir, and of full age; such no remedy till he come of age, and then they must enterplead. And in every enterplea[illegible] no writ must be found for him. And if one be found heir of full age, and the other within age, the enterplea[illegible] shall not stay till the full age of the [illegible] because the other was found heir first. Stamf. prer. 58.

Coparceners the King upon it shall make partition. And that is for the Kings benefit, because upon that partition every one shall have some part of the lands in chief. For if any should have for the purpart such the lands holden of other men, then the King should lose his prerogative in those lands for ever, because they have them when they shall dye of the bands of the King in Capite. And therefore in the Writs of Livery there is a proviso, that every one shall have in his purpart a parcel of the land holden in

CHAP. 25.

Of Presentments, or Enditements.

A Presentment is an enquiry, made by a lawful jury, of any offence against the King, his crown and dignity, as also of any other offence and Enditement. The effect in this, as in other the Kings suits, whereupon the party shall be arraigned, to put to answer by the King, and tried

tried by another Jury, which (in case of felony or treason) wee call the Jury of life and death.

Every strong suspition of such an offence, though it be in case of felony, appearing of record hurts the force of an attainment: as in an action of trespass of goods carried away, if the defendant plead not guilty, and bee found guilty as a felon; in an appeal of murder, &c. if the plaintiff after declaration bee non suit. But so is not the Sheriffs return, as where hee returneth upon one an escape of felony, &c.

31 E. 1. Endite 31.

9 E. 4. 10.

2 E. 3. 28.

7 E. 3. 324.

Without which the King can have no suits upon a wrong done principally to another: but done to himself hee may.

(a) 12 H. 7. 18. Constables and Borsholders are Conservators of the peace at the Common Law.

(b) 22 E. 4. 35.

(c) 9 E. 4. 26.

For (a) preventing of certain of these offences, that is to say, trespasses to the body and felonies, and committing those that offend to prison, till they may be tried, and so duly punished, as (b) to arrest him that maketh an affray and send him to the next Gaol, or upon reasonable cause (as if it bee night time, or there be that would rescous him, &c.) keeping him in the stocks, till hee can safely bring him to the Gaol: or to (c) arrest him till he finde surety by obligation: every hundred hath his Constable. And every leet or tithing within the hundred hath his Borsholder. The conservator of peace in an hundred is called a Constable, or high Constable: In a Tything, a pery Constable, Borsholder, Headborough, Thirdborough,

Borough

borough-head, Tything-man, or chief pledg.

Statutes.

1 E. 3. cap. 16. Stat. 1. for the better keeping and maintaining of the peace, the King will that in every County good men lawful, which be not maintainers of ill, or Barrettors in the County, shall be assigned to keep the peace.

18 E. 3. cap. 2. Stat. 2. Two or three of the best in reputation in the Counties shall bee assigned keepers of the peace by the Kings commission, and at what time need shall be, the same with other wise and learned in the Law shall bee assigned by the Kings commission, to hear and determine Felonies and Trespasses done in the same Counties.

34 E. 3. cap. 1. In every County of *England* shall bee assigned for the safe keeping of the peace a Lord, and with him three or four of the most worthy men in the County, with some learned in the Law, and they shall have power to distrein evil doers, ofcors and barretors, and to pursue, arrest, take, and chastise them according to their trespass and offence, and to do them to bee imprisoned, and duely punished according to the Law and customes of the Realm, and according to that to them shall seem best by their discretions and good advise-

ments, and also to inform themselves, and to enquire of all those that have been pillers and robbers in the parties beyond sea, and be now come again, and go wandring, and will not labour as they were wont in times past. And to take and arrest all those that they may finde by endictment, or by suspicion, and to put them in prison, and to take of all them that be not of good fame (whersoever they shall be found) sufficient surety and mainprise for their good abearing towards the King, and towards his people, and to punish the other duely, to the intent that the people bee not by such rioters troubled and endamaged, nor the peace blemished, nor Merchants, nor other passing by the high wayes of the Realm, disturbed, nor put in fear by the peril which might happen to them by such evil doers. And also to hear and determine at the Kings suits all manner of felonies and trespasses done in the same County, according to the Laws and Customes aforesaid.

13 Ric. 2. cap. 7. They must be sworn to keep and put in execution all the Statutes and Ordinances touching their Offices.

2 H. 5. cap. 4. Stat. 1. The Justices of peace must make their Sessions four times by the year, that is to say, in the first week after the feast of Saint *Michael*, in the first week after the Epiphany: In the first week after the clause of Easter, and in the first

last week after the translation of St. *Thomas* the Martyr (which is the 7 *Julii*) and more often if need be. And that the same Justices hold their Sessions throughout the whole Realm of *England* in the same weeks, every year from henceforth.

2 H.8. cap.5. Justices of peace from henceforth to be made in the Counties of *England*, shall be made of the most sufficient persons dwelling in the same Counties, by the advice of the Chancellor, and of the Kings Councel, without taking other persons dwelling in forein Countries, to occupy such office, except the Lords, and the Justices now named, and to be named by the King and his Councel. And except also the Kings high Stewards of the Lands and Seigniories of the Dutchy of *Lancaster*, in the North and South parts, for the time being.

18 H.6 cap.11. None shall be assigned Justice of peace if he have not lands to the value of 20 l. by year. This extendeth not to Towns corporate, Boroughes, &c. nor to persons learned in the Law.

1 Mar. cap.8. No Sheriff shall exercise the office of a Justice of peace by force of commission, or otherwise in the same County during the time onely that he exerciseth the office of the Sheriffwick.

Any (a) man suspecting another of a fe- (a) 9 E.4.26.

(b) 9 E.4.ibid only committed, or but (b) intended, as where one lyeth in wait to rob the people that pass by, and draweth his sword upon one willing him to deliver his purse, &c.

(c) 20 E.4.6. (d) 11 E.4.4. may arrest him (c) so as thereupon he commit him to the Gaol, as (d) common voice and fame that he did the fact, or being present where a murder was done, and found with a sword drawn in his hand, or when a robbery was done, and found with some part of the goods, are just causes of suspicion. So if I would arrest one that hath robbed me. And I.S. say I shall not, this is good cause to suspect I. S. as accessary; and what is sufficient cause of suspicion, and what not shall be tried by the Justices. But

(a) 9 E.4.ibid. (b) 11 E.4.ibid. (a) neither can any man arrest one for a Trespass, unless it be the Constable, nor for a Felony, except (b) himself suspect the party (though hee doth it by the commandement of one that doth suspect him) and that the same Felony bee indeed committed.

27 H.8.3. As if it bee for robbery, the self same thing must be stoln; for to say, that divers Beeves were stoln, and because hee suspected I.S. to have stoln sixe Beeves, hee did arrest him, is not good, without alledging expressly, that those six Beeves were stoln.

With endictments of Trespass, information upon penal Statutes (such as inflict a pecuniary mulct or other penalty upon offenders) have a neer affinity. Concerning which informations, the

Sta-

Statutes following were made.

Statutes.

4 H. 7. cap. 20. Where a penal Statute giveth whole or part to whosoever will sue a covenous release or recovery (except it bee by action) tryed upon the point of the Writ shall not prejudice him that will sue *bona fide*.

31 Eliz cap. 5. All informations and endictments where the forfeiture is limited to the Queen only, must be brought within two years after the offence committed, when it is limited to the Queen, and any other that shall sue within one year, or (in default thereof) for the Queen within two years, except Statutes of Tillage. All brought after the time shall bee void: where a shorter time is limited in any penal Statute the suit must bee brought within that time.

27 Eliz. cap. 11. Information for the Queen upon Statutes of Tillage, shall bee brought within five years after the action accurred unto her.

31 Eliz. cap. 5. Every information except champerty buying of extortions and offences against.

1 Eliz. cap. 1. Against fore-stallers, &c. must be brought into the County where the

offence was indeed done. But officers of record using to pursue informations by vertue of their office may do as before.

31 Eliz cap. 5. All suits for using unlawfull, or not using lawfull game, not having Bows or Arrows, using any Art or Mystery wherein he hath been brought up, shall be sued and prosecuted in the general quarter Sessions of peace, or Assises of the same County, or in the Leet within which the offence is committed, and not out of the same County.

29 Eliz. cap. 5. The Defendant in an information in the Kings Bench, Common place, or Exchequer, where he is baylable, or by leave of the Court may appear by Attorney, may the first day appear by Attorney of that Court, without putting in bail.

31 Eliz. cap. 10. This former Statute (29 Eliz. cap. 5.) shall extend onely to natural subjects and free denizens.

28 Eliz cap. 5. made perpetual.

27 Eliz cap. 10. An Informer shall not compound or agree with the party before his answer, nor after his answer, but by the order and consent of the Court; if he delay his suit, or discontinue it, or be *non suit*, or if the matter pass against him by verdict or judgement, then he shall render to the par-

ty

y his costs and damages to bee assessed by the Court.

In which act also many other disorders in common Informers are redressed.

Indictments of the death of a man are to be taken before the Coroners. So is it 35 H.6.27. not of any other felony, for the Statute 4 E.1 called *officium Coronatoris* setteth down the office of a Coroner to be so by the common Law, and the whole order how he is to proceed in the inquiry.

Statutes.

Artic. super chart. cap. 3. The Coroner of the Shire shall joyn with the Kings Coroner in inquiring of the death of a man within the Kings house.

33 H. 8. cap 12. The Coroner of the Kings house shall enquire alone without the Coroner of the Shire, by a Jury of the Yeomen officers of the Kings officers.

CHAP. 26.

Of Original Process.

HItherto of the first matter of the suit, it followeth to speak of Original Process.

Original process is that process which is still the Defendant do appear.

Original process is single or mixt: Single, which is by the possessions only (land or goods) or only by the person.

That by the land is of two sorts. First summons and grand *cape* in a *præcipe quod reddat*.

The Summons is a warning of the tenant in his land, but not by his goods, nor by a rent-service, rent-charge, rent-seck, or a Common which he hath, for there the land is anothers by certain summoners, two or the least. The Summons upon an action brought against one as heir, must be in land that did descend, otherwise it is in any land.

13 E.2. *Judg.* 170.

37 H.6.26.

If it be to recover the freehold of land it self, it must be in the same land, else making default, hee may at the grand *cape* wage his law of non-summons. But if he appear it makes no matter in what land hee bee summoned.

*Old N.B.*177. 30 E.3.16.

A grand *cape* is a process to take the land into the Kings hands by the view of lawful men, called thereupon Veyors, as the other are Parnors, with a summons of the Tenant to answer (a) as well to his default, as to the demandants action, and therefore it is called a grand *Cape*. Therefore here the Tenant is suffered to save his default as to say, that hee was not summoned according to the Law of the land, and thereof is ready to do his law, or that he was in prison, or disturbed by water, &c.

(a) 38 H.6.33 *Old N.B. ibid.*

Staw f. Pre. 84.

And the King shall have the land to his

own

own uſe, the Sheriff being accomptable of the iſſues thereof from the default, till judgement for the Demandant.

Statutes.

31 Eliz. cap. 3. Upon a Summon in a real action fourteen dayes before the return, a Proclamation of the Summons ſhall be on a Sunday immedately after Divine ſervice, at the door of the Pariſh Church where the land lyeth, and returned with the names of the Summoners. And till that done, no *Grand cape* ſhall go out, but an *alias & pluries* as the caſe requireth.

If the Tenant bee returned ſummoned, where indeed hee was not, the Writ ſhall abate. 22 H.6.41.

Secondly, It is ſummons and reſummons, or another like ſummons **in a moſt Conceſſor**, *Juris utrum*, **and an aſſiſe of Darrein preſentment.**

By the goods, as in aſſiſes of novel diſſeiſin and nuſance, where the originall Process is a *Pone per vadios & ſalvos plegios.*

Pone per vadios & ſalvos plegios **is a Process to attach the Defendant by certain of his** (a) **proper goods** not borrowed, or in pledge unto him, **being meer perſonal chattels**, neither a (b) chattel real, as a ward, &c. nor (c) parcel of his freehold as a clod of earth, &c. **which he ſhall** (d) **faſeit if he appear not.** (e) And the Sheriff may take thoſe goods with him, or leave them with the party at his pleaſure. But whether

(a) 35 H.6.Br. *Attachment* 20
(b) 7 H.6. 10.
(c) 27 H.6.2.
(d) 9 H.7.9.
(e) *ibid.*

whatsoever he do, the property is not out of the party till he make default.

The original process by the writ is a *Capias* (**which is process to imprison him**) then an *exigent* or **solemn** (a) **demand at five several County Courts immediately following one another**: Therefore (b) no *Allocato comitatu* lyeth if a Court be holden after an *exigent* returned, **and he not appearing**, judgement, to be out of the protection of the King and his Law, which we call **outlawry**. **The judgement whereof is to be given by the Coroner in the fifth County**. For (d) at the Common Law there is no outlawry, but where the Writ is *vi & armis*, as in trespass, conspiracy, felony, &c. And the reason why it lyeth there, is, because they are acts founded upon the sole tort of the Defendant. **And this is in main felony and treason.**

(a) *Br. per Stamf.* 15.
(b) 32 E. 3. *Exigent* 14.
(d) 35 H. 6. 6. *Br. Exigent* 24. 11 H. 7. 26

Statutes.

1 H. 5. cap. 5. In every original writ of actions, personals, appeals, and endictments in which the *Exigent* shall be awarded: the names of the Defendants in such Writs, original appeals and endictments, additions shall be made of their estate and degree or mystery, and the Towns, Hamlets and places, and the Counties whereof they were or be, in which they were or be conversant: Otherwise all outlawries thereupon pronounced shall be none. And before the out-

outlawries pronounced, the ſaid Writs and Indictments ſhall be abated by the exception of the party omitting the ſaid additions.

6 H.6.cap.1. All *Exigends* and outlawries upon indictments in the Kings Bench of Felony and Treaſon ſhall be void, if before the *Exigend* awarded, a *Capias* be not directed to the Sheriff of the County, whereof they bee named in the indictment, having ſix weeks ſpace (or larger, by the diſcretion of the Juſtices) before the return.

8 H.6.cap.10. In every indictment or appeal of treaſon, felony, or treſpaſs, after the firſt *Capias* returned; forthwith (before an *Exigend*) another *Capias* ſhall be awarded to the Sheriff of the County where the indictment is ſuppoſed to abide returnable, before the ſame Juſtices, &c. containing the ſpace of three months (where the Counties be holden from month to month) of four months (where they be holden from ſix weeks to ſix weeks) by which *Capias* the Sheriff ſhall be commanded to take his body if it be found in his Bayliwick, if it be not found, then to make proclamation (for his appearance) in two Counties before the return of the Writ. Any *exigend* or outlawry otherwiſe pronounced ſhall be holden for none.

10 H.6.cap.6. The like is to be obſerved when

when any ſuch endictment or appeal taken before Juſtices of peace, or other having power, ſhall be removed before the King in his Bench, or elſewhere by *Certiorari* or otherwiſe.

6 H. 8. cap. 4. Upon every *exigent* a writ to make three proclamations (returnable day of the return of the *exigent*, and the proclamations to be made, two in the full County Court, the third at the general Seſſions) ſhall go out to the Sheriff of every other County (*viz.* than that where the action is brought) where the Defendant is named to be, or late to have been, if the Kings Writ run there: otherwiſe to the County next adjoyning to that where he is ſo named. Being named late of *London* or *Middleſex*, the Writ of proclamation ſhall go out to every other County where he is abiding, time of the *exigent* awarded. Every outlawry to the contrary ſhall be avoided by plea.

27 E. 2. cap. 2. A Writ of *Idemptiate nominis* given to thoſe whoſe lands, goods, or chattels be ſeiſed by any officer, ſurmiſing them to be outlawed (where they be not) becauſe they bear ſuch names as thoſe that be outlawed, for default of good declaration of the ſurname.

9 H. 6. cap. 4. Such an *Idemptitate nominis* given to their Executors.

3[illegible]

If the *Exigent* be returned not fully ſerved without any folly in the Plaintiff, as (a) where the Defendant after demand at two Counties rendreth himſelf in Court, and upon mainprize found hath a *Superſedeas*, and yet appeareth not at the day. But otherwiſe it is upon a (b) *Superſedeas* by another perſon bearing the ſame name, or in caſe where no (c) more Counties but four can be holden between the delivery of the Writ to the Sheriff, and the Return, for it is the Plaintiffs own folly in the firſt caſe to put no difference between their names, and in the ſecond to take ſo ſhort a time. Though it be in the (d) huſtings of *London* which are holden uncertainly, **the Plaintiff bringing** a new *exigent* **which we call an** *Exigent de novo* (e) **before any other County holden**, but elſe not, **ſhall have the benefit of the former Counties**. And therefore it is called an *exigent allocato Comitatu*, or *allocato huſtingo*, if it be in *London*, where their huſtings are as the County Courts.

(a) 22 E.3.11.
(b) 38 E.3.1.
(c) 14 E.3.En. 17.
(d) 17 E.3.43
(e) 22 E.3.11.

Outlawry diſableth him from ſuing any action. Lit.43.

Statutes.

5 E 3.**cap.**12. In caſe where the Plaintiff hath recovered damages, and he againſt whom the damages be recovered, is outlawed at the K. ſuit, no charter of pardon ſhall bee granted, except the Plaintiff be ſatisfied for his damages. When one is outlawed by proceſs

appearance no ſuch charter ſhall bee grant-
ed, except he yeeld himſelf before the Ju-
ſtices from whom the *exigend* iſſued, who
ſhall cauſe the party to be warned to ap-
pear before them at a day. Whereupon if
the Plaintiff appear, they ſhall plead upon
the firſt original, as if no outlawry had
been. If the Plaintiff appear not (and the
warning be duely witneſſed) he that is out-
lawed ſhall be delivered by vertue of his
Charter.

31 Eliz. cap. 3. Upon every extent in a
perſonal action a writ of proclamation ſhall
go out of the ſame Court to the Sheriff of
the County, where the Defendant at the
time of the *Exigend* ſhall bee dwelling.
Whereupon three proclamations ſhall bee
made; one in open County Court, another at
the quarter Seſſions, the third one month
at the leaſt before the *Quint' exact* at the
door of the Pariſh Church where the De-
fendant ſhall be dwelling at the time of the
exigent, upon a Sunday immediately after di-
vine Service. All outlawries otherwiſe ſhall
be void.

But before reverſing of any ſuch outlawry
in this reſpect, the Defendant ſhall put in
bail, not onely to anſwer the Plaintiff in a
new action, but to ſatisfie the condemnation,
if the Plaintiff begin his ſuit within two
Termes.

Prer-

Prerogative.

By outlawry all his chattels, whether Reall as a (*a*) terme for years (and therefore there the King may ſeiſe the land it ſelf, and plow and ſow, and occupy it as the terme might) wardſhip, &c. or perſonal, as ours (*c*) goods (the property whereof is preſently in the King, and he may have a deceit againſt every man that hath a poſſeſſion of them) profits (*d*) of land, wherein he hath a Freehold or inheritance; *viz.* Rents, Corn, manurance of his paſture (yet in this caſe he cannot, &c. ſeiſe the land it ſelf, nor occupy, plow, or ſow it, or grant it away. And if the party ſo outlawed make a feoffment, this feoffment is good, and the King after that ſhall have the profits no more.) But not (*a*) a fornace, table fixed upon the land with poſts, boards, doors, windows, and ſuch like annexed to a Freehold **are forfeit to the King,** not only thoſe in poſſeſſion, but **even ſuch as he hath a right unto,** as debts, (*viz.* (*b*) due by ſpeciality, but not (*c*) by a ſimple contract, for the reaſon *ſupra fol.*) matters in (*d*) account, (*e*) goods taken away, &c. But not damages which he is to recover, as by reaſon of (*f*) treſpaſs done to his land (g) battery, falſe impriſonment, or ſuch like.

In caſe of mayme there muſt be three Capias, two in felony, as ſtealth, robbery, and burglary, **one duely in the death of a man,** be it murder or manſlaughter, **and high Treaſon.**

(*a*) 9 *H.*6.20.
(*c*) 30 *H.*6.20.
(*d*) 9 *H.*6.20.
(*a*) 20 *H* 7.13
(*b*) 50 *aſſ.pl.*1.
19 *H.*6 47.
(*c*) 16 *E.*4.4.
50 *aſſ pl.*1.
9 *El.Dy.*262.
3 *E.*3.*Cor.*333.
contr.Stamf. 188.*b.*
(*d*) *So aſſ.pl.*5.
28 *E* 3.92.
(*e*) *Stamf.*188*b*
(*f*) 28 *E* 3.92.
(*g*) *Stam.*188*b*

Sta-

Statutes.

25 E. 3. cap. 14. The ſecond *Capias* in caſe of Felony muſt be returned three weeks after.

22 *aſſp.* 81. **In caſe of Felony and high Treaſon they that tarry the** *Exigent*, though then they render themſelves, **forfeit their chattels.**

Wirt, is that which is to ſay by his goods, as for want of goods he may reſort to his perſon. As firſt in all *Præcipe quod faciat*, **and other perſonal** *præcepes*, **and in perſonal** *Si fecerit te ſecurum*, **not being againſt the peace**, and likewiſe in all *Juſticies* or vicontiel writs, **the proceſs is a Summons by the Defendants goods, an attachment or** *Pone per vadios* **and diſtreſs infinite: Or if upon the Summons a** *Nihil* **returned**, that is to ſay, **that the party hath nothing whereby to be ſummoned, then a continual** *Capias*.

22 H. 6. 38.
34 H. 6. 49.
F. N. Br. 92. g.
2 H. 4. 25.
21 H. 6. 56.

Diſtreſs infinite is a proceſs to diſtreyn him continually after, till he do appear by certain of his goods, and profit of his lands, or as we uſe to ſay, iſſues, **which he loſeth if he appear not.**

Statutes.

Weſtm. 2. cap. 37. No diſtreſs ſhall be but by Bayliffs ſworn and known.

Weſtm.

Weſtm. 2. cap. 39. The Plaintiff may aver that the Sheriff might have returned greater iſſues, and thereupon ſhall have a Judicial writ to the Juſtice of aſſiſe to enquire of what and how great iſſues he might have anſwered from the day of the purchaſe of the writ to the day of the return, and the Sheriff ſhall be charged of the ſurpluſage not returned.

1 E. 3. cap. 5. The like averment of too ſmall iſſues returned given againſt the Bayliffs of Franchiſes, as well as the Sheriff.

Upon this diſtreſs muſt be returned iſſues the value of all his lands from the Teſte of the writ until the day of the return. As if his land be worth 12 C. l. by the year, and a months ſpace between the Teſte and the return a C. l. iſſues muſt be returned upon him. 24 El. *Fairfaxes caſe in the common place.*

And with theſe iſſues whether in this caſe, or in any other caſe of a diſtreſs infinite, as after a *venire facias* to return Juries, &c **the land is chargeable** into whoſe hand ſoever it come after. As if iſſues be returned upon Tenant in tail, Tenant for life, or a man ſeiſed in the right of his wife, the land ſhall be charged after their death: or if an Abbot loſe his iſſues, and after bee tranſlated and made a Biſhop, the ſucceſſor during his life ſhall bee charged. And in this reſpect becauſe the land is charged; the beaſts of any ſtranger comming upon the ſame land may bee diſtreined for the iſſues loſt. *D. Stud per. Br. iſſues 23.* 22 H. 6. 4. 5 H. 7. 1. *Br. diſſe. 41.*

In such process as these where an attachment or distress should go out, **if the defendant be a beneficed Clerk he must be warned by his person, or land if he have any lay fee else,** as if the Sheriff return *quod est Clericus beneficatus non habens laicum feodum.* **Process shall go out to the ordinary, to make him appear by the issues of his benefice,** which is called a *venire facias Clericum.*

Br. exigent. 72. It is error if he be outlawed. 26 H 8. 7.

A Capias lyeth not here against a Peer of the Realm. But against a Knight it lyeth, for a man may be a Knight that hath no free-hold: So cannot an Earl or Lord by common entendement. But if he have nothing in the County where he is sued, the party shall have an *Elegit sure estatum* in such a County where he hath assets.

F. N. B. 73. & 74.

In a replevin the County Court, be it by writ or plaint, **if the goods be conveyed away, so as at the Tenants sute they cannot be restored.** As if he that took them drive them to a Fortlet or Castle, or out of the County, &c. whereby the Sheriff return upon the *pluries* that they are essoyned, **process of withernam lyeth, which is for the plaintiff to have of the others goods the restitution of his own.**

Statutes.

westm. 1. cap. 17. The Sheriff or Bayliff may take the power of his County or Bayliwick, and beat down a Castle or Fort where

where such beasts are enclosed, if he that took them will not make deliverance.

Secondly in Trespasses upon the case against the peace and in all other trespasses, whether it be a writ of deceit or Trespass *vi*, or though it bee a Writ from the King himself upon a contempt or breach of the peace, as refusing to come at the King, being sent unto him with money to aide him in his warre, and spoyling and wasting mens lands, goods, and chattels, and other unlawful acts doing, and so every contempt **it is attachment:** And if a *Capias* in these cases go out first, and the party be taken thereby, he shall be dismissed, because it should be by pledges, **distress infinite, and upon a *Nihil* returned, a *Capias*,** as before.

Here for contempts a *Capias* lyeth against Peers of the Realm, as for rescuing of one arrested by the course of the Law, &c. And that is in respect of their disturbance of the Law.

In actions of trespass with force, whether a common action or endictment of trespass, appeal of battery, or such like, **after the attachment returned *nihil*, it is three *Capias*, viz. a *capias alias* and *pluries*, and then process of outlawry.**

Statutes.

Westm. 2. cap. 11. Process of outlawry given in an action of accompt.

25 E.3. cap 17. Such proceſs ſhall bee made in a writ of debt and detinue of chattels, and taking of beaſts by writ of *capias*, and by proceſs of *Exigend* by the Sheriff, as is now uſed in a writ of accompt.

7 H.5. cap. 1. In writs to be purchaſed againſt thoſe that forge or make untrue Charters or Minuments, and them proclaim or cauſe to bee read, like proceſs ſhall bee made by *capias* and *exigend*, as in Writs of Treſpaſs.

19 H.7. cap 9. Like proceſs given in actions upon the caſe ſued in the Kings Bench, and Common place, as in actions of Treſpaſs and Debt.

23 H 8. cap. 14. Like proceſs, given in every writ of anuity as in an action of Debt.

CHAP. 27.

Of Counts.

THus far of the beginning of a ſute: The proceeding hath two parts, Count and Pleading (which two are but one in Pleading) or other meſne acts.

11 H.7.22. A condition (annexed to an eſtate of free-hold) cannot bee alledged in Count or pleading unleſs it be by deed: Bee it in perſonal

perſonal or real actions. But a condition 11 H.7.ibid.
knit to a leaſe for years, or grant of a ward- Lit.85.
ſhip, or other chattel Real may. Yet the Jury upon the general iſſue (as *nultort nul diſſeiſin* in an aſſiſe) may finde it if they will. And thereby the party ſhall have advantage of it.

Count is a larger declaration for the time, place, quantity of the land, and other ſuch things **of the ſubſtance of the original writ.** And therefore in a Formedon of four Acres and Count but of one, all the Writ 8 E.4.1.
ſhall abate, for it is not purſued. In an ap- 45 E.3.25.
peal of murder, hee cannot declare that the Defendant traiterouſly killed him as hee was going to ſuccour the King, in his Wars with twenty men in his company, &c. for the Writ ſuppoſeth no treaſon.

Statutes.

36 E.3. cap.15. Declarations ſhall bee good enough if they have matter of ſubſtance, though the termes be not apt.

In real actions which are in the right (but not in meer poſſeſſory ones) **the Demandant muſt alledge the taking of the profits,** we call it eſplees, **in the declaration.** As in pleas of land, the taking of the profits of the land as errable, meadow, and paſture, &c. if of a pond, then by taking the fiſh there, as Breams, &c. In a writ of right of avowſon, the eſplees ſhall bee laid in his 8 E.3.381.
Clerks taking the great and ſmall tythes. 26 H.8.3.

In an assise of an office as of a filizary, &c. seisin shall bee alleadged by the taking of 4 d. for making out a *capias*, or such like.

2 *Mar. Dy.* 114.
13 *H.* 8. 16.

In a *quod permittat*, by the taking of common by the mouth of his beasts. In a *actione habendo*, esplees shall be alleadged in the villein, *viz.* in taxing him high and low at his pleasure, in making his profit of him, to drive his cattel, to carry away his dung, and to do all other kinde of villein service, &c. But in a writ of Eschete, in a writ of right sur disclaimer, and such like, which are founded upon the seigniory, and not upon any seisin of the land it self, no esplees shall be alledged. And these esplees where they are to be alledged, must bee alledged in himself, if the action bee brought of his own seisin in his ancestor, if it be brought of his ancestors seisin, where it cannot bee brought but of the seisin of some other, there it must bee alledged in those other. As in a formedon en descender the esplees shall be alledged onely in the donee. In a formedon en remainder for an estate tail, onely in the particular Tenant to prove the estate tail executed. In a formedon en reverter, they must bee alledged both in the donor and the donee, for there a fee-simple is demanded. In a lease for life the remainder in tail, and the lessee for life, and he in the remainder in tail dye, the issue in tail shall have a formedon en descender, and make no mention of the Tenant for life. And therefore the esplees shall bee onely alleged

19 *H.* 6. 32.
Br. Esplees 11.
21 *H.* 6. 22.
9 *H.* 6. 53.
50 *E.* 3. 1.

and in tenant in tail, otherwise it is in the like case of a reversion in tail granted.

Instead of Count, a plaint shall be made in assises of novel disseisin, and in writs of dower a demand.

CHAP. 28.

Of Pleading.

PLeading is the parties debating of the suit.

Every plea, as Barre, Replication, Rejoynder, Surrejoynder, &c. **must be offered to be proved true.** By saying in the plea, *Et hoc paro natus est verificare*, which wee call an averment. But no averment need to be in avowry, for it is in lieu of a Count and Declaration. And the avowant is in a manner actor and plaintiff, and to have a return. 7 *El. Ploy.* 343.

In advantage of a matter which cannot be pleaded, shall be saved by protesting not acknowledging it to be true, although matter pleaded pass against him. As if an infant bring an action of waste against his gardein, and appear by Attorney (which none should do but one of full age) if the gardein take his nonage by protestation, because he cannot plead it, it shall save him from all mischief. But in detinue brought by the Executor of A. the Defendant cannot take by protestation, that A. made not the plain- 48 *E.* 3. 10. 4 *El. Plo.* 276.

plaintiff his Executor, for that is the very ground of the ſuite, and may bee denied by anſwer, and iſſue joyned upon it. And a proteſtation is but a ſaving to the party that vseth it, from being concluded of ſome matter alledged againſt him, whereupon he cannot joyn iſſue.

Pleas are either of the defendant when he is firſt brought in to anſwer, or the mutual pleas of both. In a ioynt action againſt two or more: as in (a) an action of debt. But otherwiſe it is a writ of (b) conſpiracy againſt two, for they are ſeveral wrongs, **one of them appearing ſhal not anſwer.** But muſt have *idem dies* **till the other come in to anſwer, or (c) the ſuite be finiſhed againſt him.** As by death or outlawry in a perſonal action, debt, accompt, or ſuch like.

(a) 48 E. 3. 1.
(b) 1 H. 7. 25.
(c) 41 E. 3. 3.

An action by, or againſt an Infant or heir, as (d) a *formedon en deſcender* brought by him, or a writ of (e) error againſt him where his Anceſtor recovered; but (f) not where hee commeth in of his own wrong, **ſhall not proceed till his full age, unleſs it be apparant that by proceeding hee cannot be prejudiced.** As in (g) a *formedon en deſtender* by an Infant, if the Tenant plead a warranty with aſſets againſt him, the parol ſhall demur, for if he traverſe the aſſets, hee ſhould acknowledge the deed of warranty. But (h) if the Tenant plead a recovery in avoidance of the eſtate tail, the parol ſhall not demur; for there the Court ſhall plead for him. But (i) it ſhall not demur in

(d) 48 E. 3. 33.
(e) 9 H. 6. 46.
(f) *Age* 16.
(g) 48 E. 3. 33.
(h) 48. E. 3. *ibid*
(i) 14 E. 2. 17. *Age* 18.

in a writ of entry *sur desseisin* by an infant, though the Tenant plead a matter *en fait*, as a Feoffment with warranty by the Ancestor of the Infant, for there the Infant claimeth of his own possession. And if an Infant and his Ancestor be Joynt-tenants in Fee, and the Infant surviveth; in a *præcipe quod reddat* against the Infant hee shall not have his age. 48 E.3.35.

Statutes.

Westm. 2. cap. 40. The husbands heire called to warranty by the alience by a *Cui in vita* shall not have his age.

Glocest. cap. 2. An Infant holden out of his heritage after the death of his Father, Cousin, Grandfather, Great Grandfather, in an action thereupon shall not have his age.

Westm. 1. cap 46. In a writ of entry by the heir of the disseisee, the sute shall not stay for his nonage, no more shall it for the nonage of the heir of the disseisor, if the disseisee bring his assise, and before the assise pass the disseisor dye. The like incorporations where the lands go by succession. **But in a writ of dower an Infant heir shall not have his age,** (*a*) nor the heir of the vouchee, in a *Quod ei deforceat* upon a recovery in a writ of dower, for it is in the nature of the first writ. 39 H.6.39. (*a*) 44 E.3.42.

CHAP.

Chap. 29.

Of Pleas to the Jurisdiction and Person.

The Defendants first pleas are dilatory, or to the action

Dilatory, which are before any plea to bar.

12 H. 7. 3. When an action is brought against many, they must joyn in the plea if they plead theis dilatories, for in a *precipe quod reddat*, one cannot demand the view, and the other pray in aid, nor one pray in aid of one man, and the other of another man.

Dilatory pleas are exceptions, or foreign Advantages.

Exceptions are such dilatories grounded upon the matter it self of the sute. Ins are in disability or abatement. Thos in disability, are to the Jurisdiction or Person. Both which must bee before the count made.

Exception.

To the Jurisdiction when it is alledged that the Court ought not to hold plea of it.

3 H. 6. 40. *Lit.* 44. To the Person, when it is alledged that the Plaintiff ought not to be answered, as if hee bee out-lawed, excommunicated, &c. In which latter case the sute shall be put without Day, onely till hee be absolved.

CHAP.

Chap. 30.

Of Pleas in Abatement.

Those in abatement are for any fault in the first matter of the suit, for which cause the defendant may have oyer of any thing tendred by the Plaintiff, and not being parcel of the record, as of the writ, condition, &c.

Pleas in abatement are to the Count first, and then to the writ, for after pleading to the (*a*) Count or to the (*b*) plaint in an assise, a man may plead unto the writ, but (*c*) not to the Count after plea to the writ, but (*d*) to the matter of the Count hee may.

(*a*) 39 E. 3. 20.
(*b*) 4 E. 3. 166.
(*c*) 4 E. 3. 134, 135.
(*d*) 24 E. 3. 47.

And among pleas to the writ, exceptions that arise upon the view of the writ are to bee pleaded before those that are out, or dehors the writ as non tenure, several tenancy, &c. 35. 3 E. 3. 70.

Pleas to the Count are for insufficiency, variance from the writ, &c.

Pleas to the writ are for default of forme, false Latine, &c.

By waging of Law of non summons in a *precipe quod reddat*, the writ shall abate. 22 H. 6. 41.

In assises of novel disseisin and nuisance, in appeals of felonie and *Furis utrum* **the defendant may have many pleas,** two, three, or more **in abatement.** As that there is no such Town, Hamlet, or place known by *Stam. 82. e of an assise. F.N.B. So k. of a Furis utrum also.* 1 E. 4. 4.

by the name, &c. and if that bee not found, then that no Tenant of the free-hold is named in the Writ, &c. So in an appeal of Felony, whether the same matters bee of several natures (that is to say) one triable by record, the other by the Countrey, as that the appeal was purchased hanging another, and also that there is no such Town, nor Hamlet, nor place known out of the Town and Hamlet as C. whence the Defendant is supposed: or all of one nature triable by the Countrey, as that his name is *William*, where hee is named in the appeal *John*, and also that there is no such Town, &c. or that the party whom hee is supposed by the appeal to kill, was dead such a day, which was two years before the appeal commenced. Or that the Plaintiff is a Bastard, or being a woman which bringeth an appeal of the death of her husband, that they were never accoupled in lawful Matrimony.

22 E. 4. 38.

The writ abating for some cause that cannot be imputed to the Plaintiffs folly: as for (a) false Latine, non (b) summons of the Sheriff (c) Joyntenancy, and such like; but not for non (d) tenure, or (e) naming one an Esquire when he is a Knight, **himself bringing another with speed in the same Court against the same party,** we call it a writ purchased by Iourneys accompts, **shall have all advantages of the former,** for he shall recover (f) costs for the first suit: the (g) defendant being Executor shall

(a) 38 E. 3. *per* 46 E. 3. 14.
(b) 46 E. 3. 14.
(c) 32 H. 6. 24.
(d) 33 H. 6. 3.
(e) 33 H. 6. *ib.*

(f) 9 E. 4. 5.
(g) 2 H. 4. 21.

shall bee charged with the assets which hee had day of the first writ. (a) Being Tenant day of the first writ, hee shall not plead non tenure, being (b) sole Tenant then hee shall not plead Joyntenancy, being (c) Joynt-tenant, then hee shall not plead several Tenancy. But no writ by Journeys accompts lyeth by, or against any other than the self-same parties, and in the same Court that the former was: for (d) if the Plaintiff in a personal action dye, his Executors cannot have an action by Journeys accompts. And (e) if two coperceners bring a formedon, and one dyeth, the other as heir to her father may have a Writ of all by Journeyes accompts. But as heir to her sister of her part she cannot. So if (f) the Tenant in the *præcipe* dye upon a Writ of dower brought, or such like, no Writ lyeth by journeyes accompts. But (g) upon the death of one of the Joynt-tenants in a *præcipe quod reddat*, where the other hath all by survivour it doth: Lastly, if an assise of fresh force be abated in the Franchise, a new assise by Journeyes accompts, cannot bee in the Guild-hall before the Justices of assise.

(a) 46 E.3.14.
(b) 41 E.3.4.
(c) 43 E.3.16.
(d) 4 E.6.Br *Journeys accom.* 23.
(e) 7 H.6.16. 23.
(f) 14 H.4. *per* 7 H.6.34.
(g) 7 H.6.23.

CHAP.

Chap. 31.

Of Oyer of the writ or bond, &c. view and prayer, voucher, garnishment, Enterpleader to the Writ and Sanctuary.

Stat. West. 2. c. 48. from henceforth view shall not be granted, but where it is necessary, &c. sheweth that it did lye in those cases at the Common Law. And this view must be demanded before any plea in bar, and may bee after pleading to the writ: for though one plead a plea that goeth to the action (as that the Plaintiff in a writ of dower is an alien) yet if he conclude to the writ, he may have view after. 3 H. 6. 55.

Foreign advantages are delaies without exception to any thing. As in all actions Oyer of the writ, &c. In real actions, view, aid, prayer, and voucher.

View is in real actions of the thing demanded, or of the land whence it cometh, when it is so necessary, as without view the defendant cannot well answer.

Statutes.

Westm. 2. cap. 48. From henceforth view shall not bee granted, but in case where the view is necessary, as if one lose land by default, and hee that loseth, moveth a writ to demand the same land. And in case when one by an exception dilatory abateth a writ after the view, as by non tenure or misnaming of the Town, or such like, if hee purchase another writ in this case, and in the case before mentioned, from henceforth the view shall not be granted if hee had view in the first writs. In a writ of dower where the demand is of the land that the husband alienated

alienated to the Tenant or his Anceſtors, where the Tenant ought not to be ignorant what land the Husband did alien unto him, or his Anceſtors; though the Husband died not ſeiſed, yet from henceforth view ſhall not bee granted. In a Writ of Entry alſo that is abated, becauſe the demandant miſnamed the Entry; if hee purchaſe another Writ of Entry, if the Tenant had view in the firſt Writ, hee ſhall not have it in the ſecond. In all writs alſo where Lands bee demanded by reaſon of a Leaſe made by the demandant or his anceſtor, as that which he leaſed to him, being within age, not whole of mind, being in priſon, and ſuch like, view ſhall not bee granted hereafter: but if the demiſe was made to his anceſtor, the view ſhall not lye as it hath done before.

Stat. *De viſu terre & eſſoyne de ſervitio Domini Regis:* View ſhall not bee granted in a Writ of Ward, in a Writ of Cuſtomes and Services, in a Writ of Advowſon of a Church (but not in caſe where there bee no more Churches than one in a Town, and all of one Saint) in a Writ of Dower, and in a Writ of *Nuper obiit*.

Aid Prayer is for Tenant for life, to 31 *E.* 3. *Iointa.* **ſummon him that hath the Inheritance, to** *in aid* 10. **help him plead.** And therefore here the te- 33 *H.* 6. 29. nant himſelf remaineth alwaies party, and is never out of Court: And this Aid Prayer is for the feebleneſs of his eſtate.

So

So must an Incumbent, the Patron and Ordinary. Else no recovery against him bindeth the ſucceſſor or them. And this is in reſpect of their intereſt to the Church, the Patron to preſent, and to have an Aſſize *Darrein preſentment* of the Tythes: the Ordinary to admit and to preſent by Laps. But upon Aid prayer it doth, though they make default, and confeſs the Action.

Statutes.

Weſtm. 2. cap. 3. He that is in the reverſion ſhall be received in default of the Tenant for life. If judgement bee given by reddition, or default, hee in the reverſion ſhall have a Writ of Entry after the death of the Termor: ſo ſhall the heir where the Tenant was Tenant in Tail.

20 E. 1. *De Defenſione Juris*, he in the reverſion deſiring to be received before judgement, ſhall finde Surety (as the Court ſhall allow) to anſwer the value of the iſſues of the Tenants from the day of the receit, till judgment, if it paſs for the Demandant.

13 R. 2. cap. 17. The like receit ſhall be for him in the reverſion upon the default pleading of ſuch a Tenant, and hee ſhall plead in chief without delay. And the Judges by diſcretion ſhall give dayes of grace between the Demandant and him that is received, without giving the co-

day in a plea of land, unless it be by the demandants assent. Surety of the issue shall be found (as before 20 E. 1.) as well where the receit is counterpleaded, as where it is granted.

Glocest. cap. 11. Tenant for years shall be received before Judgement rendred, to say that the action was by covin.

Westm. 2. cap 3. Receit is given to the wife in her husband, if hee lose her land by default, and the Tenant that recovered against her husband must maintain his own right. 31 E. 3. Joynd. et ayd. 10. F.N.B. 134. b.

Voucher is the calling of one that should warrant in to answer the action. Therefore when the vouchees entring into warranty the Tenant is out of Court. And notwithstanding a recovery in a *Warrantia Chartæ*, yet if hee bee afterwards impleaded in an action where voucher lyeth, hee must vouch him against whom the recovery was, else hee shall have no benefit of that recovery.

Statutes.

Westm. 1. cap. 39. In mordancestor, *nisi obiit*, intrusion, or other such like Writs in which land is demanded which should descend, covert, remain, or escheat after the death of any Ancestor or otherwise, if the Tenant vouch, it is a good Counterplea to say that the Tenant or his Ancestor was the first

that entred after the death of him of whose seisin he demands, unless that vouchee be ready, who if hee vouch over, the Demandant shall have his counterplea.

Also in a Writ of Entry in the degree none shall vouch out of the line. Also in Writs of Right or of Possession, (as before that is alsoo counterplea, that the vouchee nor his Ancestor had never seisin of the land or any thing in the services by the hand of the Tenant, or his Ancestors from the time of the seisin whereof the Defendant declares till the Writ purchased, so that he might a Feoffment make unless the vouchee bee present, who if hee vouch over, the Demandant shall have his Counterplea. But warranty of Charters lyes in these cases.

Quod de vetat ab warrant. The Counterplea of voucher that the vouchee his Ancestors had never any thing, so as he could a Feoffment make with warranty, shall bee received, although the vouchee bee not to enter into warranty.

14 E.3. cap. 18. If the Tenant vouch the Demandant, the Demandant may plead dead, or there is none such.

F.N.B. 134. k. 22 H.6.22.

Westm. 2. cap. 6. If the vouchee counterplead the warranty, and it bee found against him, he shall lose the land. And where the heir loseth the Tenant shall recover in

against him only hereditaments that he had at the time of the voucher. And therefore a voucher is in liew of an action where the original process is *Somons ad warrantizandum* (or (*a*) if one bee vouched within [illegible] and [illegible] awarded to full age, then a *Somons ad warrantizandum*, if he bee vouched within the parol shall demurr) and a *Grand Cape ad valentiam* [illegible] *ad warrantizandum* or *defendendum disturbationem*, and if he be not served, then a *sequatur sub suo periculo* is to go forth. And if the Tenant cannot get him served, he loseth his warranty. Therefore it is *sub periculo* of the Tenant. And if upon vouching of an heir the *sequatur sub suo periculo* bee awarded, and in the land by discent, but that hee was summoned in land that hee had purchased, the Tenant loseth his warranty, for the summons must be in lands descended. But if the *sequatur sub suo periculo*, or the *Cape ad valentiam* bee returned served, there the Tenant shall recover in value.

(*a*) 21 E. 3. 14 H. 6. 2. Br. Seq; sub. &c. 3. Old N. B. 199. + b. H e

Old N. B. ibid.

13 E. 3. Judgement 117.

3 H. 7. 13. Br. Recov. non. valus 40.

In partition among coparceners, from the body of their father, and the wife whom he dowed before any voucher by reason of such an (*a*) alienage, [illegible] coparcener in gavel kind [illegible] time, shall be defeated [illegible] in value, [illegible] furnish the recovery

(*a*) Park. 61. b. (*b*) Park. ibid.

very in value called in the case of Coparceners.

Prerogative.

15 H.7.10. The King shall not be vouched, but prayed in aid, of which in that case he has the force of a voucher. As if the King by his Letters patents give lands to one by the word (*Dedi*) the patentee shall have aid of him, because by the same word hee might vouch a common person. And when one prayeth in aid of the King in lieu of a voucher, the special cause must bee exprest, else hee shall never have in value by Petition.

9 H.6.4.

Aid of Coparceners.

And if two Parceners make partition, and one alienateth part of her purparty, the other is impleaded and prayeth in aid of her Coparcener, and they iose. In this case shee shall recover according to the rate of the moity which shee lost, whether the other alienation be before aid, prayer, or after.

1 E.3.4.

F.N.B.178.c. In an assise of novel disseisin and mortdancestor, voucher lyeth not, unless the vouchee be present in Court, and will by himself enter into warranty.

He that is impleaded in any action wherein he may vouch and doth not, shall not have the benefit of a *Warrantia charta*.

Advantages in certain personal actions are Garnishment and Enterpleader. Garnishment is upon a suit of debt,

thing alledged by the Defendant to be done upon a bailment by the plaintiff, and another, or for another upon condition. As that if I. S. do such a thing the goods shall bee delivered to him (for though the plaintiff sole delivered the goods, and I. S. were a stranger, yet I. S. is to have advantage of the condition, and may have a writ of detinue) if not, then re-delivered to the Plaintiff, that other shall be brought in to shew whether by reason of that bailment which the Defendant so alledgeth both for the (a) place, (b) condition, (c) and manner of the bailment, viz. who bailed it, &c. from which the Garnishee cannot vary howsoever he agree or disagree with the Plaintiffs declaration, himself or the plaintiff ought to have them, for garnishment is but to know whether the condition, &c. alledged by the Defendant were performed or not. And if they were delivered upon other condition than the Defendant alledged, the garnishee is at no mischief but the Defendant: for the garnishee may recover them by a writ of detinue, and the Defendant by his false plea maketh himselfe chargeable both to the Plaintiff and to the garnishee. But if the Defendant affirm not any certain bailment for place, condition, manner, &c. as if the Plaintiff declare of a bailement upon certaine conditions, &c. and shew which, and that he hath performed them, and the Defendant pray garnishment generally; there the garnishee may

14 E. 4. 2.

(a) 21 H. 6. 35
(b) 40 E. 3. 11.
(c) 20 E. 4. 13.
40 E. 3. 11.
4 E. 3. ibid.

21 H. 6. 35.

vary from the bailiwick alledged by the Plaintife, for the Defendant hath no such office the same.

Enterpleder is when divers bring several writs of (a) detinue, Quare (b) impedit against the same person in the same County, and for the same thing, though (c) they vary in time and place of delivery (for the place is not material being all in one County) so as they vary not in the substance of their declarations; as for to declare of a chest sealed, without alledging any deed in certain: and the other to alledge a deed in certain. They (d) all shall come and plead together, as much to say, thereto to answer him that brought the first writ, and therefore shall have the same day given them, if the writs bee returnable at several dayes. And the reason of enterpleading in detinue is, because otherwise if one recover against the Defendant, yet the others action is not abated, but continueth still. Otherwise it is in a real action as in a formedon *in the principe quod recidit.*

(a) 33 H. 6. 25. 8 H. 6. 30.
(b) 3 H. 6. 44.
(c) 19 H. 6. 68.
(d) 8 H. 6. 30. 33 H 6. 25.
(e) 8 H. 6. ibid. 33 H. 6. ibid. 8 H. 6. ibid.

Prerogative.

The King may appoint any place within the realm to be a safeguard for all strangers flying thither, that they shall not be molested or compelled to answer, whether one flye thither for (a) treason, (b) murther, theft, or other crime, for which he should lose life or member. And therefore this

(a) 1 H. 7. 25.
(b) Stamf. 111. The Abbot of Battail had so.

effect by the Kings grant onely (for touching the Kings Prerogative so much it cannot (d) be by prescription) and being an immunity for one that offendeth the King and his Crown is a (e) temporal matter pertaining to the temporal Coertion and Jurisdiction, and need no consecration. But when it is usurped by the Pope unduly Ceremonies is obtained the name of Sanctuary.

(d) 1 H.7.26.

(e) 1 H.7.25.

Statutes.

Taking of Sanctuary away.

16 H.8. cap. 17. In high Treason.

18 H.8. cap. 7. In Petty Treason.

17 H.8. cap. 4. and 28 H.8. cap. 15. In Treasons, Felonies, Robberies, and Confederacies, in or upon the Sea, or other Haven, River, Creek, or place where the Admiral hath or pretendeth jurisdiction.

32 H.8. cap. 4. In wilful Murder, Rapes, Robbery, in or near the high ways, or in any house, putting any person within in fear of death, Felonies, burning of houses or barns with corn, robberies of Churches, Chappels, or hallowed places, and all procurors, and receivors, and all offences where Sanctuary doth not by the Law, or is taken away by any former Statute.

32 H.8. cap. 12. In Treason, Misprision

of treason, Manslaughter within any of the places or houses of the King, or his heirs, or where the King in person is abiding. So is stealing, or in feloniously carrying away any plate, jewel, or other goods of the King or his successors, above 12 d. value.

32 H. 8. cap. 1. made perpetual 32 H. 8. cap. 3. 1 E. 6. cap. 12. In murder or poysoning of malice prepenced, breaking of any house by day or night, any person being in it and put in fear thereby, robbing in or nigh the high way, felonious stealing of Horse, Geldings or Mares, or stealing goods out of any Church or Chappel. But in all other cases of Felony it shall be granted.

2 E. 6. cap. 33. In felonious stealing of ones Horse, Gelding, or Mare.

1 Mar. cap. 6. In counterfeiting coyne that is not the coyne of the Realm, or currant in the Realm, the Queens sign, manual privy Signet, or privy Seal, and all procuring and abetting.

1 and 2 Ph. and Mar. cap. 4. From those that call themselves Ægyptians.

27 H. 8. cap. 19. All in sanctuary for Murder or Felony out of the house, wear a badge in length and breadth ten inches; they shall weare no weapon but their meat knives, and that at meale onely.

Bot-

both theſe upon pain of loſs of the priviledge.

They ſhall not bee out of their lodging before Sun riſing, nor after Sun ſet upon pain of impriſonment two dayes in that Sanctuary for the firſt time hee is ſo taken, the ſecond time ſixe dayes impriſonment, the third time loſs of his priviledge, upon ſubſtantial and indifferent proofs before the Lord Chancellour. And it is Felony for any Sanctuary perſon that ſhall of perpenced malice make reſcues, or reſiſt any Officer in impriſoning the priviledged perſons as before. Contracts under 40s. treſpaſs and covenant between the priviledged perſons, and other inhabitants in the Sanctuary, ſhall bee determined before the Governour.

32 H.8. cap. 12. All Sanctuaries adnulled other then Churches and Churchyards, and certain places named in that Act, and in 33 H.8. cap. 15. which are appointed places of Tuition, for terme of life to the offendors in capital offences. The priviledged perſons ſhall every day bee called by name, and making default three ſeveral dayes with out lawful cauſe, forfeit the priviledge: committing any offence puniſhable by death is forfeiture alſo.

CHAP.

CHAP. 33.

Of Pleas in Bar.

Thus far of Dilatory pleas.

Pleas to the action are those that go to the body of the matter.

And are pleas in bar or confession. Pleas in bar are those which are to bar the plaintiff of his action where the Tenant must make defence, as to say, *Defendit vim & injuriam quando.* And this defence shall not be in dower assise of novel disseisin, *Per quæ servicia*, and attaint.

4 H. 6. 33.

The Tenant may plead a warrant in bar of him that should warrant if he bring the action. As if there bee Grandfather, Father and son, the Grandfather is disseised, the Father releaseth to the disseisor with warranty, and dyeth after the Grandfather dyeth. Now if the son bring an action to recover the land, he shall be barred by the warranty made by his Father, and this is called a Rebutter.

Lit. 150.

Statutes.

Glocest. cap. 3. The heire shall not be barred of his mothers inheritance by the warranty of the Father, being Tenant by courtesie, or alienating without fine in the mo-

where life time except he leave assets.

And though the Tenant of the land be a stranger to the warranty, as a disseisor or one that commeth in by a recovery, may plead that he hath a third persons estate, and (a) rebut, but not vouch by a warranty made unto the person. But in (b) the case of power the Ancestors warranty is good.

(a) 42 E. 19.
(b) 21 E. 4. 82.
Lit. Chap. of Warranty.

A warranty made by the disseisor at the time of the disseisin: wee call it a warranty commencing by disseising. As the Feoffment with warranty of a father, or other ancestor, lease for years or at will, of the demise of his son, or of gardein in Knight service or soccage, or where one which hath not right entreth into the land, and presently maketh a Feoffment with warranty, barreth not his heir (d) for then his action and right should bee lost for ever. But by such a warranty the heire may bee vouched, for that is in the nature of a Covenant against him as heir to his Ancestor. So that if hee have other land descended to him from the same Ancestor, it is reason that hee warrant that which hee may do, saving to him his action that hee may have by reason of the disseisin.

(d) 50 E. 3. 12.

In an assise of novel disseisin and trespass the defendant pleading a title in bar must give colour of title to the plaintiff, for if either it bee no title, as either in trespass to plead (a) it is his free-hold, or (b) the free-hold of I. S. and that hee entred by his com-

(a) 22 H. 6. 50.
(b) 2 E. 4. 8.

(e) 15 H.7.10 commandement, or (c) when one prayeth in aid of *J.S.* or of the King, or *Rege in custodiâ*, though hee entitle himself by a lease or will, &c. colour needs not. Otherwise it is (d) if hee entitle another to a lease for years and justifie by his commandement. So (e) a matter that destroyeth the Plaintiffs title, as a release in an assise, or in a Trespas of goods a sale by a stranger in Market overt, and that the Plaintiff took them out of his possession, and he re-took them, there colour needs not.

(d) 21 E.4.ib.
(e) 32 H.6.1.
21 E.4.6 5.

No more it doth where hee pleadeth to the writ and not in bar, though the plea indeed go in bar. As in trespas of goods, that *J.S.* was possessed and made *Alice S.* and *J.D.* his Executors and dyed. *Alice S.* took the Plaintiff to husband, and was covert day of the trespas and after dyed. So should the writ be brought by *J.D.* who is yet in full life, not named in the writ, judgement of the writ, &c.

And in giving colour these things must bee observed.

1. It must bee to the Plaintiff, not to a stranger, nor to the Defendant.

38 H 6.7.

Not to a stranger, as in trespas that *A.* was seised and him enfeoffed, and *J.S.* claiming by colour of a deed of feoffment from *A.* where nothing in truth passed, &c. entred and enfeoffed the Plaintiff. This is no good colour, for in a stranger matters *en fait* must alwayes bee alledged, as to say, that *J.S.* enfeoffed *A.* who enfeoffed the Plaintiff: or that

that *A.* entred and diſſeiſed *J. S.* and enfeoffed the Plaintiff, &c.

Neither muſt the Plaintiff give colour to the Defendant, as where the Defendant pleads his freehold, now if the Plaintif ſay that before the Defendant any thing had, *A.* was ſeiſed and enfeoffed the Plaintif, and the *D.* claiming by colour of a deed of Feoffment from *A.* where nothing paſſed, &c. entred, upon whom the re-entred is not good. 19 *H.*6.31.

It muſt be of ſuch a poſſeſſion whereby he may maintain his action. 32 *H.*6.6.

As in an aſſiſe the Defendant muſt give the Pl. a colour of the Pl. own poſſeſſion, and not of the poſſeſſion of his Anceſtor, as to ſay that the Plaintif claiming by colour of a deed of Feoffment made unto himſelf where nothing paſſed, &c. is good. But not to ſay that the plaintif claiming by colour of a deed of Feoffment made to his Anceſtor where nothing paſſed, &c. for of ſuch a poſſeſſion in his Anceſtor hee cannot have an aſſiſe.

3 The colour muſt bee a matter doubtful in Law, or otherwiſe difficult to the lay-people, elſe it is not ſufferable, but hee ſhall bee forced to take the general iſſue, as in an aſſiſe to ſay, *Nul tort, &c.* or in action of Treſpaſs, not guilty. As if I bring an aſſiſe againſt you, and you ſay that you let the ſame land to one for terme of life, and after granted the reverſion to mee, and the Tenant for terme of life dyed, and that I claiming the reverſion by force of the ſaid 19 *H.*6.21.

grant,

grant, where the Tenant did never enter, &c. This especial matter is sufficable, because that is dangerous to plead *Nul tort, &c.* For the lay-people will think that the reversion passeth by force of the grant without attornment. The same Law it is where the Tenant saith, that hee himself let the land to the Plaintiff, for terme of his life, and then the Plaintiff did surrender. For the lay-people know not that a surrender may pass by word. The same Law it is where the Tenant saith, that the Father of the Plaintiff let unto him for terme of another mans life, and after released unto him. And the Plaintiff supposing that his Father dyed seised of the reversion trusted him after the death of him, for whose life, &c. because the lay-people understand not how this release doth inure, whether by way of enlargement, feoffment, confirmation, or extinguishment. The same Law it is if the Tenant say that the father of the Plaintiff enfeoffed him, and afterwards suffered him to occupy at will, and hee supposing, &c. The same Law it is to say, that the Plaintiff claiming as Bastard and eldest sonne entred, because the lay-people think that the eldest sonne, though hee bee a Bastard may inherit. The same Law it is to say that such a one was seised and infeoffed, the Tenant and the Plaintiff claiming by a deed of feoffment made before where nothing passed, &c. because the lay-people think that a good feoffment, though it bee made

with

without livery. But where the ſpecial matter is not a matter in Law, or difficult, there the Tenant or Defendant muſt take the generall iſſue, as if the Tenant ſay, that hee was ſeiſed until hee was by the Plaintiff diſſeiſed, whereupon hee re-entred, this plea is not ſufferable, becauſe all men know that the Tenant in this caſe is no diſſeiſor, or otherwiſe if hee ſay, that the Plaintiff claims as younger ſon, becauſe that every man knoweth that the younger ſon cannot inherit before the elder. The ſame Law it is if hee ſay, that hee leaſed to the Father of the Plaintiff for terme of life or years, or for terme of another mans life, and the Plaintiff ſuppoſing that hee had dyed ſeiſed of an eſtate in fee-ſimple, entred, &c. becauſe in theſe caſes the Lay people do well underſtand that hee is no diſſeiſor: and therefore in theſe, and in all other like, the Tenant muſt take the generel iſſue.

In real Actions tho the meer right then it is in reſpect of a diſſeiſin done to him or his Anceſtors, and not founded upon ſeigniory, as a Writ of Eſchete, a Writ of right ſur diſclamer, &c. the Tenant cannot traverſe the ſeiſin, but may tender a Mark to the King to have it inquired by the Jury: and being found that the Demandant was not ſeized in the time whereof he counteth, that ſhall bar him for ever. 16 E. 4. 9. 3 E. 3 Dr. 26.

Prerogative

Prerogative.

The tenant cannot tender half a mark against the King.

The heir or Executours in an Action brought against them, where they are chargeable, pleading a matter in their own knowledge (a) which goeth in perpetual bar. As for the heir to plead that nothing discended to him from the same Ancestor; the Executor to plead a releasse or acquittance made unto himself, or that hee was never Executor, nor never administred as Executor shall bee charged as in their proper duty, if it pass against them. Otherwise it is if the Executour plead *Mesne*, or another Executour alive not named in the Writ (for that is no bar, but onely to the Writ) or *Oriens inter mains* (for that is no perpetual bar, for a *Scire facias* lyeth if they come to have Lands after) or a releasse, or acquittance to their Testator: or *Nient le fait* of their testator, for they cannot have knowledge of it. Otherwise it is also if either the heir or Executour bee condemned by a *Nihil dicit*, or confess the certainty of the assets. And in the first case, as where the heir pleadeth nothing by discent, &c. which is found against him, the Plaintiff shall have an *Elegit* of the moiety of all his lands, as well purchased, as by discent: as in a *Formedon en Descender*, if the Tenant plead in bar a warranty with assets, and the demandant said *Rien per descent*, and

(a) 3 & 4. P. & M. Dy. 149. 21 E. 3. 9. 6 & 7. E. 6. Dy. 81. 34 H. 6. 22. Br. Exec. 22.

6 & 7. E. 6. Dy. 81. *Where the heir is condemned by a Nihil dicit, execution shall be of lands descended by a special Elegit, not of his goods, &c. nor no Cap. ad satisfaciendum lyeth against him.* 21 E 3. *ibid.*

found that hee hath by diſceit, hee ſhall bee barred of all that hee demandeth by his Writ (of how ſmall value that bee which demandeth) becauſe the iſſue that hee tendred is falſe.

In Aſſiſes of Novel Diſſeiſin, Nuſance, Mordancester, Juris utrum, and in Enditements and Appeals of Felony, the defendant may plead in abatement, and over in bar, or take the generall Iſſue alſo. As in Mordancester, (a) that hee hath nothing but in right of his wife; or (b) 7. 5. holdeth parcel of the Land in demand, not named in the Writ: and if that bee found againſt him, then that hee hath abated. In an aſſiſe of Joynt-eſtate, or Miſnomer, which are in Abatement, or any matter in bar, (unleſs hee confeſs a putting out of the Tenant, or that which amounts to as much, as by pleading a releaſe, or ſuch like) and if that bee not found, then hee hath done no wrong. In a *Juris utrum* the Tenant may plead Miſnomer of the Demandant, or that a ſtranger holdeth parcel not named. And if it be found, &c. that the demandant hath received his fealty, &c. And if it be found, that that it is his Lay fee, and not Frank-Almoigne, &c. In an Enditement, or appeal of death, miſnomer of himſelf, or of ſuch Town; and to the felony not guilty. But hee cannot plead a Releaſe, and to the Felony not guilty: for by the Releaſe he hath in a manner confeſſed the felony: alſo hee may plead a matter in bar, and upon

(a) 40 E 3. 29.
(b) 2 E 3. 6.
22 E. 4. 39.
12 E. 2. *Jur. ver.* 12.
4 H. 6. 15.
22 E. 4. 38.
Ibid.

that found against him; then plead hee guilty, though hee pleaded it not before.

1 E. 5. 5. In Assises of Novel Disseisin, and Nusance, he may plead a special matter that amounteth but to the general Issue. As in an Assise of Rent by Dean and Chapter to say that release was made to the predecessor, and no seisin to him, or in any Successor since that time. Though in the presence of him that pleadeth it, it amounts to no more, but that the Plaintiff was never seised, so as hee could not bee disseised.

(a) 9 E. 4. 21. Upon (a) Indictments of Felony and Treason, otherwise it is in Appeals, the Defendant being put to answer, which is called an Arraignment; is not allowed counsell, if he may (b) the fact. For either his conscience perhaps will sting him to utter the truth, or otherwise by his gesture, countenance, or simplicity of speech, it may bee discovered; which the artificial speech of his Counsil learned, would hide and colour. Also himself can best answer to the fact. But if hee plead Sanctuary, or any other matter in Law, then hee shall have counsel.

(b) Stamf. 151. b.

1 H. 7. 23.
32 H. 8. Dy. 23.
41 E. 3. 27.

A presentment in the Leet or Sheriffs turn, after the day of the presentment hindereth the party for ever, and is not traversible, but in cases that touch any Free-hold: as that one ought to cleanse the High-way or such like, *ratione tenuræ suæ*: therefore the course is to remoove such presentments into the Kings Bench by a Certiorari, where hee may traverse them.

5 H. 7. 3.

CHAP.

CHAP. 33.

Of Confessions.

COnfession is when the Defendant confesseth the Plaintiffs action to be good. The Defendant confessing an Enditement of Felony may accuse others, in which case wee call him an Approver. And one cannot (a) bee an Approver, but in felony or Treason. And that upon an (b) enditement onely, and though it bee (c) after not guilty pleaded, yet before vindict hee may become an Approver. But upon an appeal one cannot bee an approver. Not without (d) confession of felony before the Judges, which confession must bee (e) upon an enditement precedent (that the Judge may at any time give judgement to attaint him) not upon an arrest for felonie of the same offence. But hee cannot approve one that (f) received him, for hee must be of such an offence as hee himself did, together with the other: nor one that (g) abetted, and procured him to commit the felony, for hee confesseth not himself guilty of the same offence, in as much as hee cannot abet himself.

(a) 9 H. 6. Co. 1.
(b) 1 H. 7. 5.
(c) 1 H. 7. ibid.
(d) 1 H. 5. Co. 441.
(e) Stam. 143. a.
(f) Stam. 143. c.
(g) 10 E. 4. 14.

Statutes.

Westm. 1. cap. 12. Notorious felons which,

will not put themselves upon an enquest at the Kings sute against them, shall bee put to a pain *fort & dure*, as those which refuse to bee tried by the Law of the Land.

(a) The Stat. 32. H. 8. cap. 21. so reciteth it.

One that flyeth to a Church (a) **or Church-yard, and confesseth before the Coroner when he cometh, the certainty of any bar, felony, where life or member is to be lost before he be thereof attainted,** whether upon an enditement or appeal, as that he hath stolne such or such a thing, killed such or such a man. But at the first taking of the Church, it is enough to say, hee taketh it for a felony, which hee hath committed generally **may abiure,** and so save himself. But not in case of high Treason, or petty Treason, for the Coroner cannot attaint him upon his confession thereof, because hee is not his Judge of such a crime: neither can he be Judge as hee is Coroner, although hee have a Commission from the King to do it. And if the offender, being in the Church, will of purpose confess a felony, to the intent to escape of treason, yet if the Coroner have information that hee is charged with a Treason, hee may not suffer him to abjure. And that for the Kings advantage, who is to take more benefit if hee be attainted of Treason than of felony, because of the eschete. The same Law it is of petty Treason, for the Coroner can no more record his confession of that than of high Treason: neither may the Coroner if hee be informed that he have committed petty Treason, suffer him to abjure.

Stamf. 119. b.

Stam. 116.

jure of felony, and that in respect of the heinousnes of the offence, notwithstanding the King bee to have no more advantage in petty treason than in felony. Neither can a man abjure for petty-larceney, because hee is not to suffer death for it likewise. Br. Coro. 182.

Abjuration is his (a) **oath before the Coroner himself to depart the Realm for ever at the time and place set him: going the direct way thither: tarrying there but one flood and ebb if he can have passage: and till he can so pass going every day into the sea up to his knees to assay if he may pass over, and if he cannot pass within 40 daies, then to put himself again into the Church as a felon, &c.** And this abjuration is an (b) attainder in it self (and that the strongest that can bee, being by his own confession) and a (c) forfeiture of his Lands. And there is a writ of eschete of Land for felony, *pro qua abjuravit regnum.* And therefore he (d) that is hanged upon judgement against him, and becometh alive again, cannot abjure (but an abjuration in that case is an escape) for one cannot have two judgements for one offence. (a) Stam. 119. b. (b) Stam. 122. C. (c) 4 El. Pl. 262. (d) 3 E. 3. Co. 33. f.

Statutes.

9 E. 1. **Stat. de artic. cleri cap. 16.** Those that abjure may not bee molested whilest they are in the street, and whilest they be in the Church, their keepers may not tarry in the Church-yard.

9 E. 2. **Stat. de artic. cleri. cap. 15.** A Clerk

shall not bee compelled to abjure, but to have his Clergy.

21 H. 8. cap. 2. Immediately after confession, and before abjuration, the felon shall bee marked in the hand with an hot Iron, with the sign of an A. The felon must take his passage at such a day and time as the Coroner shall limit, else hee shall lose the benefit of sanctuary, and bee taken out, and further ordered according to his demerit, without restitution to sanctuary.

22 H. 8. cap. 14. If hee bee found out of the place, hee shall dye for it.

22 H. 8. cap. 12. All abjurations shall be made to certain priviledged places within the Realm, mentioned in that act, there to remain during his life.

Chap. 34.

Of Replication, Rejoynder, Sur-rejoynder, &c.

The mutual Pleas of both are the debating before issues, or an issue it self.

Debating before issue, is the discussing of the material things, to draw it to some one issue. As in an action of trespass or an assise, if the Defendant claim by a lease from the Plaintiff to A. who granteth his term to B. and to B. the defen-

defendant, the Plaintiff muſt anſwer onely to his own Leaſe, for the aſſignments of *A.* are but conveyances, and not material. But in an aſſiſe, if the defendant derive his intereſt from a ſtranger, and that *A.* was ſeiſed and enfeoffed *B.* who enfeoffed *C.* and *C.* the Tenant: there the Plaintiff may traverſe any of the mean conveyances, for they are all material.

Therefore repugnance of a Plea unto it ſelf is a faule in pleading; as in an action of Treſpaſs of his houſe, and walls broken down, the Defendant cannot plead touching the houſe, not guilty, and as to the breaking down of the walls juſtifie, for this carrieth a repugnancy in it, in as much as the houſe and the wall are all one thing.

So is a departure, where hee forfeiteth not the matter of his plea that went before, but cometh in with a new matter. As if the rejoynder bee a matter puiſne, underneath the matter of his bar, not above and going before it. As in an action of Treſpaſs, the Defendant pleadeth a deſcent unto him of the Land, the Plaintiff ſaith, that after the deſcent the Defendant enfeoffed him. Now if the Defendant rejoyne that the feoffement was upon condition, and hee entred for the condition broken; this is a departure for the matter of the bar, that is, the deſcent, is before the matter of the rejoynder, that it to ſay, the entry for the condition broken, whereby the feoffement is avoided. So if in an aſſiſe, the Defendant

pleadeth the feoffement of *J. S.* and the Plaintiff make title to himself by diſcent, and that hee was diſſeiſed by *J. S.* who enfeoffed the Defendant, or that hee enfeoffed *J. S.* upon condition, who brake the condition, and afterwards enfeoffed the defendant, &c.

Now if the Defendant ſay that after the diſſeiſin (or condition broken) and after the feoffement of *I. S.* to the Defendant, the Plaintiff did releaſe to the Defendant, or confirm the eſtate of the Defendant, this is a departure, for that is a matter that groweth after the feoffement pleaded in bar. But if hee plead ſuch a releaſe or confirmation from the Plaintiff to *I. S.* that is no departure, for it is a matter before the feoffement, or in an action of treſpaſs for goods, if the Defendant title himſelf by the gift of *I. S.* and the Plaintiff ſaith, that himſelf was poſſeſſed till *I. S.* took them from him, and gave them to the Defendant. Now the Defendant may ſay, that after the taking the Plaintiff gave them to *I. S.* who gave them to the Defendant; for although the Defendant might have pleaded theſe things at the beginning, yet in as much as it is purſuing, and fortifieth his bar, and no puiſne matter underneath the title of his bar, but eigne, and above the matter of his bar, therefore it is no departure. So a plea in bane which is intendible at the Common Law, cannot bee maintained by a matter of cuſtome, or by ſtatute Law, As in an aſſiſe the

tenant

tenant pleadeth in bar a deviſe unto him ſelf of the Land being deviſible by the cuſtome, the Plaintiff ſaith that the Deviſee was within age at the time of the deviſe. Now if the tenant ſaid that by the cuſtome there an infant of fifteen years of age may make a deviſe: This is a departure, for the cuſtome pleaded in bar ſhall bee entended of thoſe that may make a deviſe by the Common Law. So if in an action of treſpaſs the Defendant plead in bar a leaſe for fifty years from a houſe of Religion, and the Plaintiff avoid it by reaſon it was made within a year before the diſſolution, and ſo void by the Statute 31 H. 8. Now if the Defendant will alledge that by the ſame Statute it is provided that all ſuch leaſes ſhall bee good for 21 years, and ſo maintain the leaſe to bee good for ſo many years, this is a departure: or if one plead a fine, and that being avoided, becauſe the parties to the fine had nothing, will maintain the fine to bee good by the Statute 1 H. 3. becauſe hee had levied the fine *ceſti qui uſe*. Laſtly, when matters are pleaded which offer ſeveral iſſues, that is termed a double plea, and is a fault in pleading. As in an aſſiſe to plead a feoffement of the anceſtour with warranty. In debt upon a ſimple contract to plead payment and an acquittance. In an aſſiſe to plead divers deſcents of the Land in fee-ſimple, for every of them requireth a ſeveral anſwer. But in an aſſiſe to plead divers

deſcents

discent in tail, is not double, for one answer maketh an end of all, that is to say the gift in tail. So as the matter cannot [illegible] but to one issue: So in an action of debt to plead fully administred, and so riens *entier mains*, for one answer, albeit riens *entier mains* serveth.

So is it also of two or three matters together with the general conclusion, as in [illegible] upon an obligation to say, that hee is not lettered, and the deed was read unto him in another sort: and further, that hee delivered it upon a condition, which is not performed, so not his deed. So to justifie an arrest for twenty causes of suspition of felony is not double, for one answer serveth *De bon tort demesne*. No more to assign in a writ of error as many errors as appear in the record, for in *nullo est erratum*, answereth them all. But to assign divers errors *en fait* is double, for these are to bee tried by the Countrey. And the reason of all this is because upon divers issues joyned, if one bee found for the party, and another against him, the Court shall bee inveigled, and not know how to give judgement, whether for him, or against him. But to plead a settlement with warranty, and relye upon the warranty onely is not double, for hee may not plead the warranty without the settlement.

Of the first sort are Replication, Rejoynder, Surrenter, &c.

In an Action against many, if each (a) plead the whole tenancy severally, and (b) several matters in bar: as (c) Nul tort, and the other in bar: other (d) it is if one plead in bar, and the other Joyntenancy by deed: the Plaintiff at his perill must chuse his Tenant. And after issue for the whole, that, viz. the Tenancy, shall be first enquired of. And being found for the Plaintiff, then the other issue shall be enquired. Being found against him, and no title made against the Tenant indeed, the writ shall abate.

(a) 33 H.6.36.
(b) 33 H. 6.36.
(c) ces Br. ass. 383.
(d) 44 E.3.23.
8 ass. Pl. 1.
ces ibid.

In an action of Trespass meer transitory, although the defendant justifie by speciall matter, as in a (a) Trespass of goods, by commandement of J. S. whose the property is, in (b) assault and battery, and (c) appeal of mayme, in his own defence upon the Plaintiffs first assaulting of him: in false imprisonment by (d) being Constable of the Town, and that the Plaintiff brake the peace, or (e) by an arrest for suspition of felony, or by (f) the commandement of J. S. to seise the body of the Plaintiff in ward, by reason his ancestor whose heir hee is, held of J. S. by Knight service, &c. yet the Plaintiff may take issue that it was done De son tort demesne, which is to say, wrongfully by the Defendant, without answering to that matter. But if, the justification bee by matter of writing, or record, as in false imprisonment, by (a) a Warrant of Justice of peace to arrest him, or

(a) 19 H.6.65.
(b) 34 H.6.16.
(c) 41 ass. Pl. 21
(d) 5 H. 7.6.
(e) 2 E. 4.9.
(f) 22 ass. Pl. 85
(a) 21 H. 6. 5.

a

(b) 3 H. 7. 6. 2 E. 4. 9. (c) 44 E. 3. 18. 22 Ass. Pl. 185. (a) 12 E. 4. 10.

2 (b) Capias that came to him as Sheriff to take the body of the Plaintiff, or if it be (c) title or licence (d) from the Plaintiff there de son tort demesn is no plea, but (a) special matter must bee answered. So waies in a trespass local, as of his close broken down, &c. if the Defendant claim a stranger to the Land, whether to the freehold, or though it bee but to a lease of it, justifie by his commandement. And likewise in a (f) replevin which is real, the title or special matter must alwaies bee answered. If it be a trespass upon land, the Defendant justifying in some other place than the Plaintiff meaneth, the Plaintiff may make a new assignment, setting forth the place more specially. As if the defendant justifie in a place called A. as his free-hold, the Plaintiff may say the place where, &c. is called B. other than the place called A. and then the defendant may plead all anew.

(f) B. Rep.

27 H. 8. 7.

CHAP. 35.

Of Issues.

An Issue is when both the parties upon somewhat that they referre unto a trial, to make an end of the plea. And it is of the fact, or of the fact, which is commonly termed by the general name of issue, when the proper contradiction of that which one alleageth is set down by the other, which is properly termed a traverse. As in debt upon an Obligation for performance of Co-

…, and the defendant pleads hee hath performed all, the Plaintiff must shew some in- 15 H. 7. 2.
…ain which the defendant hath broken, whereupon issue shall bee joyned: but cannot reply that the defendant hath not performed all. For in Logick there bee three …ds of contradictions: General, when both the propositions are general, as, All the covenants are broken, None of the covenants are broken. Particular, when one is general, the other particular, as, All the covenants are broken, Some of the covenants are not broken, None of the covenants are broken, Some of the covenants are broken. Proper, when both the propositions are proper, as, This covenant is broken, This covenant is not broken. The two …rmake no issue in our Law, but the 33 H. 6. 9.
…er onely: and every issue is of an affirmative and a negative. **After which if any insufficiency of pleading appear in the rest, whether the issue bee joyned thereupon, which we call a *Demurrer*, or no, the party must replede or begin a new where his first defect was.** And in this case a Jury 35 H. 8. *Br. repled.* 54.
…ready at the bar that to pass upon the 7 H. 7. 3.
…shall bee discharged. As if the bar be …, and the replication ill, and issue taken …n it, the judgement must bee that the …intiff must make a new replication, and …ur shall remain. So if the bar bee …, and likewise the replication, but the …rder ill, and the issue taken upon the …rder, the defendant must take a new …rder, and the replication shall remain.

But

But if the bar be ill, and the replication good and the iſſue taken upon it, now they may plead all a new, becauſe the bar which is firſt of all is vicious.

But no repleader ſhall be in an aſſiſe if the Plaintiff have diſcloſed a ſufficient title: for in an aſſiſe no Land is certainly demanded, but an aſſiſe onely prayed. And therefore where a ſufficient title is diſcloſed, the Plaintiff ſhall have judgement upon ſeiſin, and diſſeiſin found for him. But no repleader ſhall be notwithſtanding that the Tenant have made a (a) vicious bar or (b) miſrejoyned. Otherwiſe it is if the Plaintiff take iſſue upon an inſufficient bar.

(a) 14 H.7.12.
(b) 5 H. 7. 29.
33 H.6.37.
5 H. 7. 29.

If the tenor of this iſſue come on the Plaintiffs part, the form is, *Et hoc paratus eſt verificare quod inquiratur per recordum, vel patriam, &c.* If on the Defendants part, then is it, *Et de hoc ponit ſe ſuper recordum illud & ſuper patriam.*

19 H. 6. 57.

Iſſue in a Writ of right cannot be taken, wee call it joyning of the mile, upon the meer right, but by the party himſelf, not by Attorney.

15 H. 7. 13.

Where the Plaintiff in his replication maketh title at large, without traverſing, confeſſing and avoiding the bar, or any way meddling with it, the tenant tenders iſſue upon the title by ſaying, *Et hoc paratus eſt aſſiſe ſur la title*, that is, Let the aſſiſe be taken upon the title, which is called a pleading the aſſiſe at large. This to bee under-

15 H. 7. ibid.
5 H. 7. 29.

where the title is by a matter en fait, but not made or done (a) in a forein County; for they are not triable by the assise. (a) 5 H.7. ibid. 14 H.7. 6.

And in a personal action, whether trespasse or replevin where justification is made 46 E.3. 11. 46 E. 3. 11. or damage feasant, for that is meerly in the personality, 10 H.6. 26. where the title of the land 14 H. 7. 6. cometh in question, it doth not till issue joyned. 4 H.6. 10. And yet in that case it never pleads Tenant for life, but onely for tenant for years, Bailiff, &c.

Prerogative.

Also in these actions shall be of the King before issue joyned onely, though the King be seised but in his natural capacity, as in right of his Dutchy of Lancaster. 5 E.4. aid de Roy. 50. 3 H.6. f. Pl. 26

CHAP. 36.

Of Trial by Jury.

This being of a matter en fait, that is to say, done in the Country. For a Jury shall not be charged with a matter in Law, nor it shall not be given in evidence unto them. But they will take knowledge of the Law, and may give their virdict generally, viz. 9 H.6. 38. 14 El. Pl. 410. a virdict may bee given at large. As in an issue of *Nul tort nul disseisin*. So the Jury may finde of themselves matters of record

record if they will, and although it bee not given in evidence. And therefore a fine or common recovery may bee given in evidence without shewing it under the great Seal, or Seal of the Court, or vouching the Roll of the recovery, for the Jury may finde them if they will. But peradventure they are not bound to finde it upon pain of attaint, unlesse it bee shewed under the Seal.

Old N.B.171. 11.b.

The form of the Writ of venire facias.

It is triable by the oath of twelve free and lawful men of the same County, indifferently chosen, whom we call a Jury, and the making of the Jury is called a panel or array. And these must be 12 for the verdict, no more or less, as of (*a*) 11 or 13; it void: free, not (*c*) villeins, nor (*d*) aliens; lawful, for one outlawed may not be a Juror, because hee is not *Legalis homo*, (*e*) and of the same County, for upon (*f*) a trespass local, as grass cut down in the County of *D.* where the Trespass was in the County of *S.* if the Defendant plead not guilty (as he may) and the Jury finde him guilty in the County of *S.* the verdict is void. But if they finde them guilty generally, an attaint lyeth. But upon an issue whether the Executors have assets in their hands, the Jury may finde the assets in any County, for it is but a transitory thing. Lastly, the Jury must be indifferently chosen, so as neither the Sheriff that maketh it (for that is good cause of challenge to the panel or array) nor the Juro's that are to pass upon it (for that is good cause of challenge to the pols)

(*a*) 41 *ass.Pl.*
(*c*) 26 *ass.Pl.*28
(*d*) 14 *H.*4. 9
(*e*) 21 *H.*6.30.
(*f*) 9 *H.*6.63.

28 *H.*8.*Dy.*30.

bear either favour or malice to any party. As for the Sheriff to put in any Juror of the parties denomination. And either the Sheriff or Juror to be of his (a) Fee, or (b) servant, or within (c) his distress, whether his Tenant (immediate or not immediate, as (d) holding of J. S. who holdeth of the party) or not his Tenant, as where hee is to come to the parties Hundred, or the party hath a Rent charge going out of his land. To bee of kin to the party, for Cousinage in the Sheriff is a good principal challenge to the array, and in a Juror to the Poll: although it bee in the ninth degree, and that one cannot bee heir to the other of the land challenged (which is intendible for the warranty and land of the wife) and the Sheriff or Juror bee Cousin in the ninth degree unto the husband, the reason whereof is, for the affection which the Law intendeth that the one doth carry to the other. And because one may bee heir unto the other of other land. And therefore it is a good challenge in personal suits also: To have been (a) arbitrator on his part in that matter. To (b) have an action of battery depending against the party, or an action of debt by the party against him, &c. The Juror to have (c) taken money for his verdict to have (d) given it before hand, or to have (e) passed formerly in the same matter, and such other things as of themselves carry favour or malice in them, and are called principal challenges. So

(a) 7 H.4.10. (a) 8 Ass. Pl. 2. (b) 21 E.4.67. (c) 38 H.6.25. for the Sheriff. (d) 38 E.3.3. (e) 38 E.3. ibid. 15 E.4 18. Br. chall. 68. 38 E.3. ibid. maketh a query of this. 15 Eliz. Pl. 425. for the Sheriff. 21 E.4 63 for a Juror.

(a) 21 H.6.39 for the Sheriff. 3 H.6.24. for the Juror. (b) 11 H.4.26. (c) 49 E.3.2. (d) 49.E.3.1. (e) 7 H.4.11.

of those which only do induce it? as to bee the parties (f) Master, (g) Councellor, Attorneys (h) Steward of his Mannors, to (i) sue for the Sheriff (k) him in an action of debt, &c. to bee (l) of the same society with him, as if both bee of Graies Inne, or the (m) party to bee within his distrefs, or (n) hee to have passed before upon such another quarter.

(f) 21 E.4.67.
for the Sheriff 14 H.7.2. for a Juror.
(g) 42 E.3.1.
(h) 22 H.7.2.
(i) 21 H.4.26.
(k) 20 H.7.2.
(l) 14 H.7.2.
(m) 19 E.4.13

Statutes.

Westm.2. cap.38. In an Assise no more shall be summoned but 12.

Men above lxx. years of age continually sick, or sick at the time of Summons, shall not be returned in Juries or Assises: nor any that dwell out of the County, unless it be in grand Assises.

Artic. super chart. cap.9. 34 E.3. cap.4. Juries shall be made of the next people of the County.

11 H.6. cap.1. None dwelling in Stewes shall be of a Jury.

9 E.3. cap.4. A deed pleaded in a Franchise shall be tried in the County where the action is brought.

2 E.6. cap.24. Upon stroke or poyson in one County, the party dying in another, an endictment and trial may bee in the County where hee dyeth. And an appeal

sued

sued there, and tried by twelve men of the same County.

Likewise the accessaries in one County to Murder or Felony in another County, shall be indicted, arraigned, &c. in the County where the offence of accessary is done.

33 H. 8. cap. 20. Endictment of a person lunatick, being at the time of confession of treason before the Councel, of perfect memory, and so certified by them, shall be tried by Free-holders of any Shire to bee appointed by commission. And the trial whether hee bee culpable or not, shall bee there in his absence.

13 H. 8. cap. 23. Confession of Treason, Misprision of Treason, or Murder, being made before the Councel, or three of them, or they vehemently suspecting one of such an offence, it shall bee enquired, heard and determined by Commission out of the Chancery, in the Shire or place limited in that Commission, by such lawful persons as shall be returned; wherein no challenge for the Shire or Hundred shall be allowed.

28 H. 8. cap. 13. and 27 H. 8. cap. 4. All treasons, felonies, robberies, murders, and confederacies within the Admirals Jurisdiction, shall bee enquired and determined in such form of Law as if it were done upon the Land, by commission directed to the Admiral and three or four other assigned

by the Lord Chancellor in the Shire limited in their Commission, where no challenge shall be for the Hundred.

31 H.8. cap.4. The endictment and arraignment of treasons and misprision of treasons in *Wales*, or else where the Writs out of the Chancery of *England* run not, shall bee in such Shire, and before such Commissioners as the King shall appoint.

35 H.8 cap.2. All treasons, misprisions, or concealments of Treason done out of *England*, shall be enquired, heard, and determined in the Kings Bench by men of that Shire where the Bench sitteth, or else before Commissioners, and in such shire as shall bee limited by Commission.

1 and 2 Ph. and Mar. cap. Trials for treason shall bee according to the course of the common Law.

23 E.3. cap.3. No enditor bee put in Enquests upon the deliverance of Enditees of Felonies or Trespass.

Westm. 2. cap.38. None shall bee put in Assises or Juries triable in their own Shire, but such as have 20 s. a year Free-hold, nor in assises triable out of their own Shire, unless they have 40 s.

21 E.1. *De ponend' in Assis.* None shall be put in assises triable out of their own Shire but such as have lands to the yearly value of C.s. nor in assises triable in their own Shire, unless they have 40 s.

2 H.

2 H. 5. cap. 3. None ſhall paſs in an Enqueſt upon the trial of the death of a man, nor between party and party in plea real or perſonal, whereof the debt and damages amount to 40 marks, unleſs he have lands of the yearly value of 40 s.

33 H. 8. cap. 13. In Cities, Boroughs, or Corporate Towns, an inhabitant being worth 40 l. in goods, ſhall bee admitted in trial of Murders and Felonies in every Seſſion and Gaol-delivery for that Town, though he have no free-hold.

35 H. 8 cap. 6. made perpetual.

2 E. 6. cap. 32. The cauſe of having 40 s. value, muſt bee inſerted in the *venire facias*; and bee of lands out of antient demeſne. Where this clauſe needs not, the Jurors muſt diſpend ſome land of Free-hold out of antient demeſne within the County where the iſſue is to be tried.

27 Eliz. cap. 6. Where the Jurors returned in the Kings Bench, Common place, Exchequer, or before Juſtices of aſſiſe, ought to have 40 s. Free-hold, there they ſhall from henceforth have 40 l. yearly Free-hold out of antient demeſne, in the County where the iſſue is to bee tried. And the clauſe thereof inſerted in the *venire facias*. Theſe two Statutes extend not to Corporations.

27 Eliz. cap. 7. No Bayliff of Liberty ſhall return to the Sheriff, or deliver unto him

the name of any person to bee returned in a Jury without some addition whereby the party may bee known. Neither shall the Jury, &c. return any Juror out of a Liberty without some addition whereby hee may bee known, nor within a Liberty with other addition than that is delivered unto him by the Bayliffe, &c.

8 H. 4. cap. 3. Every Juror returned within the County of Middlesex shall bee called the fourth day of their returne, and appearing at the same day, their appearance shall bee recorded, and they shall not be amerced, nor lose their issues.

5 E. 3. cap. 10. A Juror taking of the one part or of the other, shall never be of Jury more, and besides imprisoned.

34 E. 3 cap. 8. The party or any stranger may sue him for it.

38 E. 3. cap. 12. And both the Jurors and the embracers to procure it, being thereof attainted, shall pay ten times so much as hee hath taken.

West. 2. cap. 30. Assises of novel disseisin, mordancestor, and ancestrel shall be taken thrice a year by two Justices assigned, associated with one or two discreet Knights in the Shire where they come.

In every Shire before their departure they shall appoint the day of their returne. And adjourn the assises if the taking bee by any meanes deferred.

Also

Also in assises of mordancester being required, they may adjourn into the Bench if need be. And when it cometh to the taking of the assise, the Justices of the Bench shall send it back again to them.

All pleas in either of the Benches that require small examination, shall be determined before them.

13 Ed. cap. 4. *Statutum de finibus levatis.* Such enquests being taken, shall be returned in the Bench, and there judgement shall be given.

Enquests and Recognisances determinable before Justices of either Bench; shall be taken in vacation time, before any of the Justices before whom the plea is brought, being associate to one Knight of the same Shire, where such Enquests shall pass, unless it require great examination.

12 Ed. cap. 3. *Stat. Ebor.* Enquests in pleas of land (that require no great examination) shall be taken in the County before a Justice of the place where the plea is accompanied with a substantial man in the County, Knight or other, so that a certain day be given to the Bench, and a certain day and place in the Countrey, in presence of the parties or manifest of the same.

Enquests in pleas of land that require no great examination, shall be taken in the Countrey (in manner aforesaid) before

two Justices of the Bench.

2 E. 3. cap. 17. All such Enquests in plea of land shall hereafter bee taken as well of the request of the Tenants as Demandant.

12 E. 3. cap. 11. *Nisi prius* shall not be granted before the name of the Jurors returned.

7 R. 2. cap. 7. In all manner of pleas where an *Nisi prius* is grantable of office after the great distress returned, and thrice served before the Justices against the Jurors, and thereupon the parties demanded if any of the said parties will pursue, or if the parties refuse to have *Nisi prius* in the case, then at the sute of any of the Jurors that is present a *Nisi prius* shall bee granted for ending of the quarrel.

14 E. 3. cap. 16. The *Nisi prius* in the Kings Bench shall bee granted before a Justice of that place, if any Justice of that place may well go into those parts. Else before a Justice of the Common place, &c. otherwise the chief Baron being a man of the Law, if, &c. or else before the Justices assigned to take assises in those parts. So that one of them bee a Justice of one Bench or other, or the Kings Serjeant sworn.

18 Eliz. cap. 12. The chief Justice of *England* upon issue joyned in the Kings Bench or Chancery, and the chief Justice

of the Common pleas, and chief Baron of the Exchequer, upon iſſues joyned in their ſeveral Courts (or in their abſence two other Juſtices or Barons) or made Juſtices of *niſi prius* for the County of Middleſex, in all cauſes joyned to ſit in Weſtminſter-Hall within the Term, or four daies after.

4 E. 3. cap. 11. confirmed. 7 Ric. 2. cap. 15. Juſtices of *niſi prius* ſhall enquire, hear, and determine, as well at the Kings ſute as the parties, all maintainers, conſpirators, maiſters of confederacy, and committers of Champerty, and all other things contained in the ſaid Article, as well as Juſtices of Eyer ſhould do, if they were in the ſame County.

14 H. 6. cap. 1. Juſtices of *niſi prius* have power in caſes of Felony and treaſon as well upon acquittal, as attainder, and thereupon to award execution.

Stat. Ebezac. 12. E. 2. cap. 2. Upon a deed denied where witneſſes are named, proceſſe ſhall bee awarded againſt the witneſſes, if they come not at the grand diſtreſs, or upon a *nihil non inventus* returned, yet the taking of the inqueſt ſhall not bee deferred. If hee come at the grand, and the enqueſt remaineth untaken for ſome cauſe, the witneſſes ſhall have *idem dies*, and not appearing, then the firſt iſſues returned upon them ſhall bee forfeit, and the enqueſt taken, notwithſtanding their abſence.

An

An Enquest shall bee taken notwithstanding the absence of witnesses dwelling in a Franchise where the Kings Writ runneth not.

7 H.4.17.
36 H.8.Dy.61. **Four of the Jury must alſo be of the ſame Hundred**, and ſo many are enough though in bee in an attaint where the Jury is 24. In an information upon the Statute of plurality of Farms, for having ſeven Farms in ſeven Towns in four ſeveral Hundreds: If four of the Jury have any thing, or dwell within any of the four ſeveral Hundreds it is ſufficient.

Statutes.

14 H.8.cap.6. **made perpetual**, 27 Eliz.cap.32. Six ſufficient Hundreds ſhall bee returned in every Jury.

27 Eliz.cap.6. If two ſufficient Hundreds appear in an perſonal action, it is enough.

If the thing in iſſue lye in the notice of two ſeveral Counties, and not of one only, for (a) onely two Counties may joyn, and no more. And two may though they bee not the next, as *Kent* and *Deverſhire*, **the Jury ſhall be made** (b) **equally out of both**. That is, ſix out of the one, and ſix out of the other. And this we call a Joynder of Counties, as in (c) an action of Treſpaſs, if the Defendant juſtifie for common appendant to Land in another County, but in a Writ of annuity and Count of a ſeiſin in another County then where the Church is, out of which the annuity goeth.

(a) 15 *Eliz.*

(b) 49.*aſſ.Pl.* 1.1.

(c) 49 *E.*3.19. 21 *H.*6.3.

Sta-

Statutes.

...cap. 10. An assize of novel dis-... Remainour of that Innocents in di-... Counties, shall bee in the confines of the ... Counties.

But upon an Indictment of an offence ... the Crown, the trial shall never ... 4 H. 7. Cor. 60.
...gunde of Counties. Therefore an ... 6 H. 7. 10.
...dictment that one stroke of S. in one Coun-..., of which stroke hee dyed in another ..., is no good Indictment, because it ... bee tried, for that the Counties can ... joyn in an Indictment. And therefore ... the Statute 2 and 3 E. 6. (which also ... with the Law in this case) they were wont ... the people into the County where ... stroke was. But otherwise it is in an ap-...

But if the Defendant plead in ... as in a *bomine replegiando*, or though ... but in the Writ of Ejectione or Debt, 19 H. 6. 18. by ... the Plaintife is a villein regardant *the common law*, ... Manner of his in another County, yet 40 E. 3. 36. ... shall be tried in the County where ... is brought. And this is in *Favorem* ...

... confirmed 28 E. 3. cap. 13. ... every suite between Aliens and a Deni-..., (though the King bee a party) the ... of the Jury shall bee the Aliens. ... mary bee in that case, and if there be ... not

not to that number, then ſo many as
there not parties, not with the party to
ſure.

Where a Peere of the Realm is
2 *Mar. Pl.* 117. **to the action, a Knight muſt be**
to the Jury.

Statutes.

Magn. chart. cap. 29. A Peere of
Realm upon an endirement of felony
treaſon ſhall bee tried by his Peers.

28 H. 6. cap. 9. Dutcheſſes, Baroneſſ
Counteſſes, ſole or married, ſhall bee
(in ſuch caſes) as Peers of the Realm.

Proveable of the Stat. 7. E. 4. ca. 2. ſo reciteth it. **a Court of Piepowders the trial is by**
Merchants.

39 E. 3. 2. **The Jury in a writ of right is** call
39 E. 3. 2. the grand Aſſiſe. Being **four Knights**
1 *Mar. Dy.* 98. other in default of Knights, **chuſing a**
There muſt bee twelve beſide the four Knights. **ry of 12. into them.** So note 16. In all
the grand Jury is alwaies about 12
therefore no attaint lyeth, for him that
ſeth in a writ of right, becauſe it paſſeth
Brat. 42. the grand aſſiſe which is more than 12.

Challenges are here allowed for
parties (if they will) both to the array
to the pols. And whether to the panne
the pols, **are to be tryed by ſome of the**
(a) 27 *H.* 8. 26. **rors, if it be (a) before any Jurors ſ**
the Court ſhall chuſe the Triors, when
ny Jurors are ſworn, they muſt try it.

Challenge to the array is when the
ry is not ſufficiently impannelled

cause of challenge to the Sheriff, and afterwards to the Coroners, who by reason of just exception against the Sheriff made 14 H. 7. 31. 4 H. 7. 3.
(d) 8 H. 6. 12.
(e) 15 E. 4. 24.
(f) 15 E. 4. 8.
27 H. 8. 26.
27 H. 8. 26.
(a) 49 E. 3. 1.
(b) 3 H. 6. 36.
(c) 19 H. 6. 9.
(d) 21 H. 7. 29.
27 H. 8. 26.
7 H. 4. 46.
7 E. 4. 17.

old make the array, the (d) Court chuse certain named Esloiers (e) where the parties shall neither have challenge to the whole array. Challenge to the polls when any of the Jurors are insufficient to pass upon the trial. This challenge must be taken before the pannel be sworn: For if the Plaintiff challenge one, when the pannel is perused, the defendant challenge the same person, yet the Plaintiff may release his challenge, and then the Juror shall not bee drawn, because the Defendants challenge is nothing worth, in as much as it was not made till the pannel was perfected, and shall be tried by two of the Jurors taken by the Court, against whom no challenge shall be admitted, but challenge for what cause not in reproach of the Juror, as to be (a) of counsel with the party, (b) within his distresse, to have (f) tenements within the hundred, or (d) not sufficient freehold, shall be examined upon his oath, which wee call an examination upon a voire dire: he that challenges the array shall not challenge it against him, or (which is as strong) if he doe it, shall never challenge the polls without shewing cause presently, which shall be tried out of hand. Before the Clerk call through the pannel. So shall not any one challenge. And after challenge to a Juror for one cause, as favour, &c. which passeth

challenge him for another, as before
shewing in the Hundred, &c.

Stam. 157 *b.* *Dy.* *St. p. Br. chal.* 11. *in an appeal.*

So in appeals of Felony the defendant may challenge 35 without shewing cause, which is called a peremptory challenge, and may challenge more, but must shew cause.

Statutes.

Bract. 144. No person arraigned for any petty Treason, Murder, or Felony shall be admitted to any peremptory challenge above the number of twenty.

20 *E.* 4. 11. *Stam.* 159. *c.*

But when there be both some to fill the Jury, as the greater part being returned do not appear, and if all the pols be challenged and drawn, then no Tales shall be, but a new *Venire facias* issues directed to some indifferent thing, other of the same County or hundred, for there may be many (a) challenges, and then there will be a great number (b) till it be full, which we call a *Tales*, which must be an equal number (c) to them that the principal Jury was, *viz.* 24 or 20. *Tales de circumstantibus* is an award of the Court, that the Sheriff shall return so many persons as will make up the number of the Jury, after challenges and pols taken, and if there be not enough of the bystanders, then the Clerk of the Court shall command the Sheriff to return so many persons as will make up the number of the Jury.

(a) *Stam.* 155. *b.*
(b) *Bract. tales*
(c) 37 *H.* 6. 12.
(d) 14 *H.* 7. 2.

Statutes.

West. 2. *cap.* 6. made perpetual

cap.

A Tales may be made up before Juſtices of Aſſiſe or *Niſi prius* of able perſons of the ſame County, then preſent at the prayer of the Plaintiff or Demandant.

And they are called to the King upon requeſt by any authoriſed thereto, or aſſigned at the Court, of by the party that followeth upon a penal ſtatute as well for the King as for himſelf.

14 El. cap. 9. Such a *Tales de circumſtantibus* before the Juſtices of *Niſi prius* ſhall bee granted at the prayer of the Defendant or Tenant.

But in Enditements and Appeals that Tales may be of a greater number than the principal panell. As 40 or as many as the Court will award; and that is in reſpect of the peremptory challenge of the Priſoner. 14 H. 7. 7.

The Jury being charged, may neither eat nor drink (but by leave of the Judge) before their verdict given, and being ſo together they be agreed, it maketh their verdict void. After they be agreed, it is but 20 H. 7. 3. 6 H. 8. Dy. 3.

The Jury upon arraignment either (a) in the Kings Suit, (b) or in an Appeal acquitting one that was found guilty of (c) death of a man upon an Inquiry (d) by the Coroners *Super viſum corporis* muſt be who did the fact. But upon an Enditement (e) before the Sheriff or Juſtices of

(a) 14 H 7. 12.
(b) 14 H 7. *ibid*
(c) 13 E. 4. 3. 4 E 6. 12.
(d) 13 E. 4. *ibid* 4 E. 6. *ibid.*
(e) 14 H. 7. *ibid*

of peace, for that is not of Record, as the finding before the Coroner is, (f) neither doth this take place in an acquitail upon an Enditement for the felonious taking of goods.

(f) 13 E. 4. ibid. 4 E. 6. ibid.

7 E. 6. Pl. 91. ibid.

The Jury in an Assise of *Novel disseisin* (which are there themselves properly called an assise) **shall inquire of the plea in abatement**, though the issue bee joyned upon the seisin and disseisin. **And therefore no plea in abatement is there answerable.**

34 Ed. 1. *De Conjunctim feoffatis.* The defendant in Assise alledging joyntenancy of his part with a stranger by Deed, the Plaintiff may aver him to be sole tenant; whereupon Processe shall bee made against both the defendant and the stranger. And if at the day both of them justifie the feoffement, they shall maintain the exception, and further answer to the Assise, as if the original had been purchased against him joynedly. If the exception bee proved false by the Assise, they shall have a years imprisonment, though the Assise pass for them. If the Defendant absent himself at the day, the Assise shall pass against him by default, though the stranger appear and justifie the Deed. Whether both, or one appear, if it bee found by the Assise that the Exception was truly alledged, the Assise shall pass no further, but the Writ shall abate. Such an Exception shall not bee alledged

dged by the Bayliff of any Tenant. The like proceſſes in aſſiſes of *Mortdanceſter* and *Juris utrum*.

In Infant bringing an Aſſiſe, if a matter en fait, that is, done in the ſame County be pleaded againſt him, whether in Avowrement, as in an aſſiſe of Rent, that hee had made his plaint of the ſame land whence hee ſuppoſeth this Rent to bee iſſuing; or in Bar (*b*) as the Deed of his Anceſtor, with warranty, **the Jury ſhall inquire of all the circumſtances.** Otherwiſe it is a Writ (*c*) of Entry *ſur diſſeiſin*, or other (*d*) *Præcipe quod reddat*: for there the point put in iſſue, and no other, ſhall be tried by the Jurors. Otherwiſe it is alſo in an Aſſiſe upon pleading recovery (*e*) againſt him, or other matter of Record: in that caſe he muſt anſwer, and the Jury ſhall not inquire of the circumſtances, for the Court ſhall plead and maintain for him. 11 *Aſſ. pl.* 6. (*b*) 48 E. 3. 33. (*c*) 9 E. 4. 34. (*d*) 48 E. 3. *ibid.* (*e*) 48 E. 3. *ibid.*

The like inquiry of the circumſtances ſhall be, if in an aſſiſe brought againſt him he plead to the aſſiſe at large. Otherwiſe it is if he plead in Bar, for there if the Plaintiff make himſelf title as by a ſtatute Merchant, &c. and the Infant traverſe the title which is found againſt him, the plaintiff ſhall have judgement without inquiring of the circumſtances, becauſe the iſſue is taken out of the point of the aſſiſe, and therefore is all one as if the Infant were of full age. So that it is better for an Infant to plead unto the aſſiſe at large, than otherwiſe. 28 *Aſſ. pl.* 21.

Old N.B. 104. The form of an Aſſiſe of *novel Diſſeiſin*, is this, *Rex vic' ſalutem. Queſtus eſt nobis A. qd B. injuſte, & ſine judicio diſſeiſivit eum de libero tenemento ſuo in N. poſtea triginta annos jam ultimos elapſos. Et ideo tibi præc' qd ſi prædict' A. fecerit te ſecurum de clam' ſua pr'os tunc fac' tenement', illud reſeiſum de catallis quæ in ipſo capt', & ipſum ten' tum de catallis eſſe in pace uſq; ad proximam aſiſam cum Juſtic' nr'i in partes ill' venerint. Et in eadem fac' xii. liberos & legales homines de viſnet illo videre tan' illud, & nomina eorum inibi reveri fac'. Et ſum' eos per bonos ſum' qd ſint coram præfat' Juſtic' nr'is ad præfatam aſiſam parati inde facere recogn'. Et pona per vadium & ſalvos plegios præd. B. vel ballivum ſuum, ſi ipſe inventus non fuerit qd tunc ſit ibi ad illud recogn' audiend'. Et habeas ibi ſumm' nomina plegior': & hoc breve. Teſte, &c.*

14 El. D. 310. for all.

40 E. 3. 48.

39 Aſſ. pl. 13. If the Tenant in a Mordanceſter (be it Tenant of the land, or Tenant by his warranty) **traverſe any point of the writ**, as the dying ſeiſed of his Anceſtor, &c. which goeth in abatement of the writ, **yet the Jury ſhall inquire of all the points**, as whether the Demandant be next heir, and whether his Anceſtor dyed within fifty years, &c. **and any one found againſt the Demandant abateth the writ.** But a plea in bar of the aſſiſe by matter of record, releaſe, collatteral warranty, or ſuch other matter as is out of the three points of the Aſſiſe, is peremptory to the Tenant, if it paſs againſt him. And if ſuch a Plea in Barre bee found againſt

the

the Tenant, and yet the Jury inquire further, and finde one of the points of the Writ against the Demandant, as that his Ancestor dyed not seised, &c. hee shall recover notwithstanding that; for such an enquiry should not bee upon a plea in Barre. *Dyer* thinketh it to be so likewise, where the Tenant voucheth, and the Demandant doth counterplead the voucher, *viz.* that in that case though the counterplea bee found for the Demandant, yet that all the points must bee enquired and found for the Demandant, or else hee shall not recover. But *Fitzherbert* thinketh otherwise in that case, because it is a plea in Bar, and not to the writ.

For the Juries direction in their verdict greater liberty is permitted in pleading, and matter doubtful in Law, for a Traverse may be omitted. As in debt against an Executor, it is a good plea to say, Administration was committed to him, and therefore hee should bee named Administrator, and not Executor, without traversing that hee is not Executor, for the Lay-people know no difference between one administring as Executor, and one administring as Administrator. 9 E. 4. 35.

The special matter may be pleaded together with the generall issue, &c. As that the Obligation put in sute, was sealed by him and delivered to *A.* to keep till certain Indentures were made between the Plaintiff and him, before which Indentures made, the Plaintiff took the Obligation 9 H. 6. 38.

out of the poſſeſſion of *A.* So is it not his deed. This is good, and yet by this general concluſion the matter precedent ſhall not be waved, for it were perillous to put the ſpecial matter in the mouth of the Lay-people.

The Count may be abridged before verdict, ſo as the original remain true, as in an aſſiſe of his Free-hold, and make his plaint of Land and Rent, hee may abridge it for the Rent. In an aſſiſe of his Free-hold in *D.* and demand two Mannors in *D.* hee may abridge his plaint for one. But being of his Free-hold in *D.* and *S.* and demand one Mannor extending into both, he cannot abridge either of them, for then the writ remaineth not true. In a writ of waſte and aſſign it among other things, in racing of a Copper fixed to the ſoil, hee may abridge the waſte aſſigned in that, ſo as thereby he falſifie not his writ. But if the writ be *Quare vaſtum fecit in domibus boſcis & gardinis*, he cannot abridge the waſte ſuppoſed in *domibus*. In a writ of ward *De cuſtodia terre & heredis*, and count of the Mannor of *D.* and 15 Acres of Land, which in truth are parcel of the Mannor, and pleaded by the Defendant in abatement of the writ: hee may abridge his demand of the 15 Acres. In treſpaſs *de bonis & catallis captis*, and count of money taken away (for which this form will not ſerve, the money muſt needs bee expreſſed in the writ) hee may abridge the count touching that.

14 *Aſſ. Pl.* 9.
4 *E.* 4. 33.
14 *H* 6. 4.
10 *El. Dy.* 172.
39 *E.* 3. 10.
39 *E.* 3, 20.
Br. abridgm. 111

Sta-

Statutes.

21 H.8. cap.3. The demand of a thing entire may bee abridged before verdict, though thereby the Writ become false. After acquittall upon an appeal or endictment of Felony or Treason, he shall neither be drawn in question for the same offence again. Therefore upon an Endictment of Man-slaughter or Murder, the Justices (by discretion) were wont not to proceed to arraignment till the year and the day were past, for otherwise if he should bee acquit upon his arraignment, the parties appeal were lost. 22 E.4.Co.44

CHAP. 37.

Of Trial by Battail.

IN (a) writs of right, and in appeals (b) that touch life, trial may be by battail at the Defendants choice. Therefore (c) the Demandant in a Writ of right, had need alwayes to have his Champion ready, else hee may happen to bee deceived.

(a) *Old Na.Br.1*
(b) *See the manner of waging battail & performing it.* 9 H.4.3. *in an appeal of robbery.*

The battail in a writ of right must bee all by Champions. Therefore in a writ of right an Infant may joyn the *Mise* and try it by battail. So can hee not in an appeal, for there it must be done in proper person: 17 E.3.2. *in an appeal of murder.*
(c) *Old N. B ib.* 9 E.4.35.

(a) Br. Chal. 196 which Champions must be (a) freemen, not villeins, and (b) so is the issue taken that he is ready to defend it by the body of J.S. a Freeman. Therefore (c) for the Lord to offer his villein for his Champion in a Writ of right, or in an appeal, is a manumission of him. And the Demandants champion must have seen him or his Ancestors in possession, and thereof take his oath.

(b) 3 H. 6. 55.
(c) Bracton.
Westm. 1. cap. 40. so reciteth it.

Statutes.

Westm. 1. cap 40. Touching the Oaths of the Champions it is thus provided, because it seldome happened, but that the Champion of the Demandant is forsworn, in that hee sweareth that hee or his Father saw the seisin of the land or his Ancestor. And that his Father commanded him to dereign the right, that from henceforth the Champion of the Demandant shall not bee compelled so to swear.

9 E. 4. 35. The battail in an appeal must be in proper person. And therefore there the Defendant is retrayned from the choice of battail, and must needs try it by Jury. If there be any notorious presumption of the fact in him, as that he brake prison, or escaped by flight being led towards prison for it, or was (b) endicted for it. So in an appeal of Murder, that hee was taken in the act with a (c) bloody knife, in an appeal of Robbery, that upon fresh suite and hue and cry hee was taken with the manner,

1 Iss. Pl. 6.
(b) 22 E. 4. 19.
(c) 6 H. 3. Cor. 411.

having

having some of the money about him, or of inbecility in the plaintiff, as if hee bee maymed, or within age, &c. 22 E.4. 29.

But against a Peer of the Realm bringing an appeal, the Defendant shall not wage battail, much less against the King, either upon an endictment or appeal. *Discourse of the Cust. of London, fol.* 13. *Stam.* 108.

6 Ric. 2. cap. 6. Ousteth battail in an appeal of rape.

CHAP. 38.

Of Trial by witnesse.

In a writ of dower issue taken upon the death of her husband shall be tried by witnesses. So shall no other case in the Law. 8 H. 6. 23.

CHAP. 39.

Of Trial by wager of Law.

In some cases also the trial shall bee by the Defendants oath, which wee call waging of his Law. As 1 where the Tenant in a *præcipe quod reddat* alledgeth that he was not lawfully summoned according to the Law of the land. 2 in meer personal contracts, wee call them simple contracts, as (*a*) debts for money lent, or 22 H. 6. 41. (*a*) 1 H. 6. 1.

rent upon a leaſe for years of a ſtock of ſheep, or ſuch like; (but (c) not upon a leaſe of land. And though it be of land ſtored with beaſts, yet the Defendant ſhall not wage his Law for the Rent due for the beaſts, for it is all but one entire contract) detinue of a horſe, or other perſonal thing; but not of a deed indented, or obligation, or of a leaſe for years of land, nor in an action upon the caſe, for it is not by reaſon of any contract **growing without deed**, for in debt upon ſale of a horſe for 10 l. if the plaintiff have a ſpecialty of it, hee ſhall eſtop the Defendant to wage his Law. But upon detinue and count of a baylement by deed, yet the Defendant may wage his Law, for detinue is the cauſe of the action, which may be diſcharged by matter *en fait*, as the Defendants redelivery, or the Plaintiffs taking of it back again, &c. **or privity of others**, for in detinue upon a baylment by another mans hand, the Defendant may wage his Law, becauſe he is not to anſwer to the baylment, but to the detinue. So in debt upon a Contract by another mans hand: But not in accompt upon receit by another mans hand, for there hee muſt anſwer to the receit: **the defendant may wage his Law. Therefore in ſuch kinde of actions Executors are not chargeable, as** in debt upon ſale of goods to the Teſtator, and (b) though the party have a tail enſealed of it, for that is no ſpecialty: or for (c) wages due by the Teſtator upon a retainer. Otherwiſe it is in ſuch

(c) 9 E. 4. 1.

34 H. 8. Br. leygager 97.
18 E. 4. 23.
39 H. 6. 35.
27 H. 8. 22.

18 H. 8. 3.

15 E. 4. 25.

(b) 25 E. 3. 40.

(c) 11 H. 6. 48.

such an action brought by a Labourer (who is bound by Statute to serve) in (*d*) debt upon arrearages of an account made by the Testator before Auditors (who are Judges of record) or (*e*) upon a lease for years, though it bee made without deed, for in none of these cases the testator could wage his Law.

(*d*) 10 H.6. Execut. 21.

(*e*) Br. Execu. 33

Prerogative.

No wager of Law shall be against the King. Therefore in an attatchment upon a prohibition the party shall not wage his law that hee did sue forward contrary to the Kings prohibition, for the King is *quodamodo* party of the contempt. And for this cause also, debt upon a simple contract shall not beforfeit to the King by out-lawry, for then the party were in worse case than before, where hee might have waged his Law.

24 E. 3. 39.
18 E. 3. 4.
50 E. 3. 5.

Statutes.

Magn. chart. cap. 28. Wager of Law shall not bee admitted without credible witnesses.

5 H. 4. cap. 8. In actions of debt upon the arrearages of an accompt fayling to the issue (to put the Defendants from their law) that the same was found before their Apprentices or servants Auditors assigned in, shall bee in the Judges discretion upon examination

mination of the Attornies, or whom elſe they pleaſe to receive, or auſt the defendants of their Law.

12 H. 7. 18. 3. **In plaints in Court Barons for perſonal things under 40 s.** yet (by preſcription) it may bee by Jury: which is againſt the common courſe and order of it.

CHAP. 40.

Of Demurrers.

7 E. 6. Pl. 85. **AN Iſſue of the Law** which we call a demurrer, **is when admitting the matters alledged either of them reſted in the iudgement of the Law.** The form of joyning a demurrer is, *Et prad. quer' dicit quod placitum prad. definimus, ſufficiens in lege exiſtit ad ipſum*, the Plaintiff *ab actione ſua prad. &c. præcluden. quodque ipſe ad placitum illud modo & forma placitatum neceſſe non habet, nec per legem terre tenetur reſpondere, unde pro defectu ſufficien. reſponsionis petit Judicium, &c. Et prad. Def. ex quo ipſe ſufficient. mater in lege ad prad. quer' ab actione ſua prad. verſus eum habend. præcludend. ſuperius allegavit quam ipſe paratus eſt verificare, quam quidem mat. prad. quer' non dedicit, nec ad eam aliquatenus reſpondet, ſed verificationem illam admittere recuſat petit judicium: & quod prad. quer' ab actione ſua prad. verſus eum habend. præcludatur.*

This

this being joyned upon an exception to the original it self, or count for some fault appearing in it, doth onely drive the defendant to make a better answer, which we call a *respondeas ouster*, if it pass against him. 50 E. 3. 20.

CHAP. 41.

Of Appearance.

THus far concerning pleading.

The other mean acts are Appearance, and Continuance, or Judicial acts.

Appearance is the parties coming into the Court: whereupon (*a*) Common day is given the fourth day after the very day is allowed, and so are all entries, *obmittit se quarto die post*. But so is it not upon a certain day given unto him, as Monday, Tuesday, or such like. (*a*) 12 H. 4. 24. 1 H. 6. 4. F. N. B. 25. a. 1 H. 6. *ibid.*

When the party for not appearing should have some great loss or corporate fine, as to have a Charter of pardon allowed where one before was out-lawed at the suite, or a *Sequatur sub suo periculo*, when they appear not, the land is lost: in a replevin, *sicut pluries*, when a *Capias* in *Withernam* is to go against him, &c. hee may appear, though the officers return force him not to it, as if in the two first cases hee return a *nihil* 48 E. 3. 1. 7 E. 4. 15. 8 H. 6. *ibid.* 3 H. 6. 14.

nihil, or (that the beast) be eſſoined in the latter.

8 H.6.8.
3 H.6.13.
3 H.6.50.
8 H.6. *ibid.*
3 H.6.14.

If the Plaintiff will not appear when he is demanded at the day, which is called a *non-ſute*, or lay in Court that he will not ſue forwards, which is called a *retraxit*, alwaies of record, **this is peremptory**, and loſeth him his action. But in real actions brought by many, if one will not proſecute the reſt may alone. Except in the writ *De nativo habendo*, that is, *favorem libertatis*.

10 *aſſ.Pl.* 12. *in an aſſiſe.*
Old N.Br. 46.

For executors alſo Summons and Severance lieth in perſonal actions.

48 E.3.14.
Br.Som. & Seu. 9.

If the Defendant will not plead, which is a *nihil dicit*, this in all actions, real and perſonal, is peremptory, and loſeth the action.

7 H.6.39, 41.
Br. default. 34.

So in perſonal actions if hee appear and the (*a*) ſame term or otherwiſe, and (*b*) plea or (*c*) demurrer joyned make default. And this default ſhall never bee ſaved how good cauſe ſoever hee have to excuſe it as fall of waters, impriſonment, &c. for to appear and plead, and not to maintain it is a kinde of *nihil dicit*. But either of the parties may for once, for ones commendation ſoyne lieth not after another without many degrees be excuſed of appearance, by attorney ſoyne which lieth not for him that appeareth in proper perſon (for it is to excuſe his abſence, whereunto his preſence is contrary) nor that cometh in by *exigent*, or *Capias* (for hee abideth in ward, or by mainprize and therefore cannot make default) if they

(*a*) 7 H.6. *ibid.*
(*b*) 38 H.6.33.
(*c*) 18 E.4.7.

9 H.5.5.
35 H.6.33.

an essoyne, that is to say, demand if the 18 E. 4.4.
day, or any of the four daies, unless
the other cast an exception, that is to say,
cast an exception that no essoyne be re-
ceived. And the fourth day the essoyn must
either be allowed (and then it is said to bee
adjudged and adjourned) or disallowed. But
upon every mean appearance a new es-
soyne lieth, (a) though one were cast before (a) 27 H. 6. 2.
(for the Pl. and the Def. if they list, may 21 E. 4.16.
search infinitely by the Common Law.) As
after issue upon a custome bastardy, or *ne* 39 H. 6.29.
unque accomple en loyal matrimony, at the day
of the certifying the Defendant may cast an
essoyne: After essoyne of the demandant, if
the Tenant at the second day bee essoyned,
and at the third day demand the view, and
have it. Now at the day after the view, hee 27 H. 6. 2.
may bee essoyned again, and at the day af-
ter that the demandant upon a wager of law
in debt, and day given to do it, if the Plain-
tiff be essoyned at the day, and at the day
given by the essoyne the defendant bee es-
soyned, now the Plaintiff at the day may be
essoyned again.

And this is called *essoin de male venir*, or
the common essoine. Beside which es-
soynes for special causes, as of being beyond
sea, going *ad terram sanctam*, of the Kings
service, and *de malo lecti* are allowed. And
also (a) a year and a daies adiournment,
whereupon an (b) oath must be taken that (a) 27 H. 6. 1.
the cause is true. (b) 2 E. 4.16.

But no such special essoyne lyeth in an
assise

(c) 21 H. 6. 42. assise (c) of Novel disseisin, (d) dower, (e)
(d) 44 E. 3. 15. assise of Darrein presentment, and Quare
(e) 27 H. 6. 1. *impedit*, for then the six months would pass, and so the Church come in lapse, for such essoines must have a year and a day adjournment. But a Common essoyn lyeth in all those cases.

Statutes.

Westm. 2. **cap.** 12. In an appeal of the death of a man no essoyne shall lye for the Appellor, for whatsoever cause in whatsoever Court the appeal be.

Westm. 1. **cap.** 41. In assises and *Juris utrum* after that the tenant hath once appeared, hee shall bee no more essoyned.

Westm. 2 **cap.** 28. In like manner it shall be touching demandants in an assise.

Westm. 1. **cap.** 42. Parceners, and Joyntenants in a *præcipe* against them shall have but one essoyne.

Glocest. cap. 10. So of a man and his wife impleaded in the Kings Courts.

9 E. 3. **cap.** 3. **Stat.** 1. In a writ of debt against executours, they nor any of them shall have but one essoyne before appearance, that is to say, the summons or Attachment, not but one after appearance.

Westm. 2. **cap.** 27. None allowed after the day given by *Præce partium*, in case where the parties consent to come without essoyne.

Marleb. cap. 13. After a man hath put him-

himself upon an enquest, hee shall have but one essoyne.

Westm. 2. cap. 27. After one hath put himself upon an enquest, an essoyne shall be allowed him at the next day, but never after, whether hee were essoyned or not.

Stat. cap. 19. None shall need to swear to warrant his essoyne.

Westm. 1. cap. 43. The Demandant may aver against an essoyne (before Justices) of being beyond Sea, that the Tenant was within the four Seas the day that hee was summoned, and three weeks after.

Westm. 2. cap. 17. In an essoyne *De malo lecti*, the demandant may aver by enquest that the Tenant is not sick, nor in such plight, but hee may come before the Justices. Such an essoyne shall not lye in a Writ of right between two claiming by one descent.

5 E. 3 cap. 7. Essoyne of the Kings service, nor protection shall not bee allowed in writs of attaint.

11 E. 2. **Stat. of essoyns.** See many particular cases where essoynes lye not.

CHAP. 42.

Of Continuance.

CONtinuance is from day to day till the end of the Sute, else (a) if the Plaintiff do nothing, it is called a discontinuance; if an errour bee in the continuing

(a) 54 E. 3. 48. 11 H. 7. 5.

nuing, as by awarding a *Capias* where a diſtreſs ſhould bee, it is called a miſcontinuance.

Statutes.

21 H. 3. *De anno Biſſextili.* The day increaſing in the leap-year ſhall bee reckoned of the ſame month wherein it groweth, and that and the day going before ſhall bee accounted for one day.

51 H. 3. *Dies communes in Banco.* Daies ſhall bee given in writs nine returns, as coming in *Michaelmas* term, from *Octab. Mich.* to *Octab. Hillarii, &c.*

51 H. 3. *Dies communes in Banco,* and 32. H. 8. cap. 21. Common daies ſhall bee given in real actions nine returns. In writs of dower five returns.

Marleb cap. 12. In dower *unde nihil habet,* four or ſix daies ſhall bee given in the year.

In Aſſiſes of Darrein preſentment, and *Quare impedit,* from fifteen to fifteen daies, or from three weeks to three weeks, as the place ſhall bee neer or far.

5 E. 3. cap. 6. and 7. In an attaint ſix daies ſhall bee given at the leaſt.

3 H. 6. 40. Little. The ſute of an excommunicate perſon ſhall be put without day, terme paroll ſine Jour till he be abſolved. And ſo is it in all other caſes which happen without the Plaintiffs folly, as by the demiſe of the King

King (ſo wee call the death of the King, becauſe in Law hee never dieth, but leaveth his Crown to another) *non venuunt.* of the Juſtices, ceſtor of the eyer, protection, &c.

Statutes.

1 E. 6. **cap.** 7. By the death of the King no action, ſute, bill, or plaint ſhall bee diſcontinued, or put without day. But the proceſs, pleas, demurrers, continuances, ſhall ſtand good, and be proſecuted in ſuch manner and form, as if the ſame King had lived. **After continuance taken, the defendant may for once leave his former plea, and plead any thing growing ſince this latter continuance,** which wee call a plea *puis darrein continuance.* As if the defendant in an action of account plead receit of parcel by the Plaintiff who wageth his Law: now at the day which the Plaintiff hath to perform his Law, the defendant may plead a releaſe *puis darrein continuance.* 21 E. 3. 49.

Continuance is by proceſs, or upon the Roll. **That upon the Roll is a** *Dies datus,* **Emparlance** *Dies datus* **when the Court giveth the parties day,** and therefore in a perſonal action the defendant ſhall not bee condemned by default after ſuch a continuance: for it is the act of the Court, and he doth not demand day as upon an Emparlance, and this **is alwaies before the Count.** **Such a continuance by aſſent of both the parties is called a** *Præce partium.* 21 E. 4. 16. 7 H. 6. 39. 41 Br. default. 34. 18 H. 8. 6. 41 E. 3. 1.

Br. Contin. 14. So as if the defendant come upon the exigent by a *reddit se*, and bee by mainprise, yet the Plaintiff may have day by *prece partium*, notwithstanding that thereby the defendant shall bee let out of ward, for it is by assent of the parties.

22 H.6.12. **But in assises the continuance is by a** *Justiciarii nondum avisantur*, **and not by a** *Dies datus*.

7 H. 6. ibid. **Emparlance is when the defendant demandeth day to see if hee may end the matter without further sute, which he may do once, but not oftner without the Plaintiffs consent: and is allowed after the Count.**

8 H. 8 6. **After which he cannot plead to the Jurisdiction, person, or in abatement either of the Count or writ** For (*a*) after emparlance a *Supersedeas* of priviledge out of the Chancery shall not bee allowed: hee cannot plead that the land is within the five ports or antient demesne, &c. or that the Pl. is a villein, or (*d*) outlawry in the Plaintiff in debt upon a simple contract, or in tresp. of battery or false imprisonment. (But in debt upon an obligation hee may, for that is to the action, inasmuch as the King is to have the debt) or that the Plaintiff is an alien, *viz.* to the person in an action of trespass to his house broken down, but to the action hee may: Nor misnomer as no such Town of *D.* where hee is named *J. S.* of it. But where a *præcipe quod reddat* is brought of the Manor of *D.* in *D.* there hee may, for there it is in barre, or in an action of dow against

(*a*) 22 H. 6. 7.

(*d*) 4 H.6.67. 16 E. 4. 4. 32 H.6. 33. 13 H. 7. 17.

32 H.6.27.

against an Executor that hee is an administrator, and not an executor. But that hee never was executor, never administred as executor hee may, for that is to the action, **not demand oper** of the obligation, or such like, but hee may plead variance after, and so come to have a view of the Obligation and Condition thereof, whereby to plead any matter in bar. 4 H. 7. 10.

But after a special emparlance, *Salvis omnibus advantagiis,* **hee may plead to the Count or writ and have oper,** but yet not in that case plead to the jurisdiction or person. 4 H. 6. 67. Br. Contin. 6.

In an appeal of Robbery, or such like, **that toucheth life, if the defendant plead a plea whereby his life should come in jeopardy, the Plaintiff shall not emparle unto it,** but must answer *Sedente curia.* 22 E. 4. 19.

Default after emparlance, that is, at the day given by the emparlance **is peremptory,** and loseth the action in all actions whatsoever, real or personal, for it is a departure in despight of the Court. As in debt, trespass, or such like, the Plaintiff in this case shall recover his damages in a *præcipe quod reddat;* if the Tenant appear and imparle, and after make default, seisin of the Land shall be awarded, and not a *petit cape.* In a writ of right if the tenant vouch, and the vouchee enter into the warranty and emparle, and after make default, the demandant shall recover seisin of the land against the 38 H. 6. 33. 1 H. 7. 11. Br. default. 34. 39 H. 6. 16. 38 H. 6. 33.

tenant, and the tenant over in value against the vouchee.

Chap. 43.
Of Meſne, Judicial Proceſs.

Judicial Proceſs is a Proceſs out of that Court where the original is returned, proſecuting the action. And therefore upon an original returned *tarde*, an *alias* and *pluries* ſhall go out of the ſame Court *Teſte* the chief Juſtice, for by the return the Court is poſſeſſed. But if no return at all bee made, the *alias* and *pluries* ſhall go out of the Chancery, *Teſte Regem*. This muſt be ſealed with a ſeal Judicial, being in the cuſtody of the chief Juſtice of that Court.

22 *Eli. Dy.*

Judicial Proceſs are meſne proceſs, or in nature of new originals.

Meſne Proceſs which is for any neceſſary act to be done, not only for the Plaintiff againſt the defendant, but for either of them againſt any other, whoſe preſence in the Court may be neceſſary for them. As againſt one that is vouched or prayed in aid of. So againſt Juries, witneſſes, &c. Sometimes execute judgements given, or any thing elſe neceſſary for the trial of any of their allegations.

2 *H. 6. 4.*

Old N. B. 171. **Upon a fine levied before it be engroſſed the writs to compel attornment are** *pri-*

qua

quæ Servicia, when the fine is levied of a seignory. Old N.B. 170.

Quem redditum reddit, when it is of a rent charge, or rent seck. Old N. B. 170.

Quid juris clamat, when it is of a remainder or reversion. Old N.B. 168.

Statutes.

23 Eliz. cap. 3. The entry of record of an Attournment upon a fine shall bee utterly void, except the party (mentioned to attorn) first have appeared in Court in person, or by attorny warranted by the hand of one of the Justices of one Bench or other, or of one Justice of assise, upon a writ of *Quid juris clamat*, *quem redditum reddit*, or *per quæ servicia*, as the case requireth.

In petitions, whether in Parliament, or elsewhere, and though the King have granted the lands over, **or wheresoever the King being made party, may be at loss**: as when hee is prayed in aid of, in a *præcipe quod reddat*, or other real action against his lessee, but not in (*b*) tresspas (*c*) *Ejectione firmæ*, or other (*d*) personal action, for there hee is to lose nothing. **A writ of search lyeth, which is to search in the treasury before the plea proceed, if by likelihood some matter may be there to maintain his title.** As upon finding by office that *A.* died seised (of certain Land holden of the King) without heir, and a traverse put in that *A.* held not of the King. But if one come and say that *A.* had issue *B.* who enfeoffed him, there no search

Stam. prær. 73.

(*b*) 27 H. 8. 28.
(*c*) 15 By. 320
(*d*) 27 H. 8. ib.

ſearch ſhall bee, for no matter can bee in the treaſury, to prove whether *A.* had iſſue, no more if the Kings title bee by an alienation in mortmain.

Statutes.

14 E. 3. cap. 14. In a petition and ſearch granted after four writs, whether any imminent or remembrance be found for the King, or not, the party ſhall bee put to anſwer. So as every of the four writs bee delivered to the Treaſurer and Chamberlains forty daies before the day of the return.

38 H. 6. 33. 8 E. 4. 4. *for the Demurrer.* 38 H. 6. *ibid.*

In real *præcipes* **where a free-hold is to be recovered upon default, after plea, iſſue, or demurrer a petty** *Cape* **ſhall go forth** in the nature of a grand *Cape* in all things, ſave that here the tenant is **to anſwer to the default onely**, not to the demand alſo, as in a grand *Cape*. And therefore it is called a petty *Cape*, and the other a grand *Cape*, becauſe there is leſs in the one than in the other.

Old N.B. 179. (a) 2 H. 4. (b) 42 H. 4. 1. (c) Old N.B. 71. (d) 30 H. 6. 8. 30 H. 6. *ibid.*

So upon a voucher, a *petit cape advalentiam.* **In thoſe that are for other hereditaments**, not in point of ſeigniory, as (a) annuity, (b) *Quare impedit*, *Quo jure* (c) *quod permittat*, *&c.* **upon default as before, a diſtreſs ſhall go forth in lieu of a** *petit Cape.* And both there, and upon view granted, day ſhall bee given as in a plea of Land, for it is in the nature of a *præcipe quod reddat*, in as much as hereby hee is to recover the land it ſelf.

The Proceſſe againſt Jurors is firſt

a Venire facias to the Sheriff to return them, at which day if they appear not, then a *habeas corpora*.

And after that a distress infinite. *Old N. Br.* 171.

Statutes.

27 Eliz. cap. 7. No Juror shall bee returned without the true addition of the place of his dwelling at the time of the return, or a yeare before, or some other addition whereby hee might bee known, nor no estrete shall bee without such addition as is in the return.

35 H. 8. cap. 6. In every *Habeas corpora* or *distringas* with a *Nisi prius* at the first writ, 7 s. at the least shall bee returned in issues upon every Juror, at the second 10 s. at the least, at the third 13 s. 4 d. and ever afterwards the double of 13 s. 4 d.

2 Eliz. cap. 32. If the principal Jury appear not fully at the *nisi prius*, those that make default, shall forfeit their issues, though the Jury bee made up *de circumstantibus*. (a) *Br. default.* 58.

Where in personal actions upon the defendants default, the Jury shall be taken, which wee call taking of the Jury by default: In an action of trespasse alwaies (a) whatsoever the issue be, (b) release, (c) Justification, &c. So in (d) debt, detinue, account, & the rest which are for things in

(b) 34 *H.* 6. 24. 2 *H.* 4. *Br. enq. de dam.* 11. (c) 9 *H.* 5. 15. (d) 5 *E.* 4. 6. 1 *H.* 7. 1.

tainty, if the iſſue be taken upon a matter en fait onely, as (e) payment, or that an (f) acquittance pleaded in bar by the defendant, was made by *dures*. But if it be upon the acquittance it ſelf, releaſe or other matter in writing, the Plaintiff may there pray iudgement if he will. But if hee do not pray it, the Jury ſhall bee taken by default, as in an action of treſpaſs.

(e) 1 H. 7. 1.
(f) 9 H. 5. 13. 42 E. 3. 1.

The forme of all theſe writs. Old N. Br. 106. in an aſſiſe of novel diſſeiſin, and 25. in darrein preſentment

But in aſſiſes of novel diſſeiſin, nuſſance, mortdanceſt or, darrein, preſentment, and *juris utrum*, the original writ commandeth a Jury, as well as the defendants, to be warned, which Summons to the Jury, ſerveth inſtead of a *venire facias*. So that the proceſs here againſt the Jury is, *Somon habeas corpora & Diſtringas*.

And therefore thereupon default after that original proceſs ended, *viz.* the Attachment in an aſſiſe of novel diſſeiſin, and nuſance, the ſummons and reſummons in a mortdanceſtor, darrein preſentment, and *Juris utrum*, the enqueſt ſhall be taken by default, whether the default be preſently after the reſummons, or after eſſoine, or plea pleaded. As it ſhould bee taken if the Tenant did appear.

(i) E. N. B. 196. g
(k) F. N. B. 50. k.

CHAP.

Chap. 44.

Of Judicial proceſs in the nature of new Originals.

Judicial proceſs in the nature of new Originals (in none of which any freehold ſhall ever be recovered) but damages onely, are theſe that follow. First ſuch as command to do ſomething, as, 17 E.3.76.

1 Reſummons or Reattachment according as a Summons or attachment lay in the firſt action, to receive in the former plight a ſute put without day. And may either revive the original alone, or the whole proceeding by ſpecial words, in that Reſummons or attachment, as if it bee againſt the Tenant after a voucher, the voucher is not received, unleſs ſpecial mention bee of the vouchee alſo, nor any plea at all is revived but the original onely. But in every Reſummons after an iſſue, the iſſue is revived, for day is given to the Jurors expreſly: So is all the pleading by a ſpecial Reſummons. But no ſuch Reſummons, nor Reattachment ſhall bee upon a diſcontinuance, though it bee in a Writ of Ward, where a Reſummons is given by the Statute, for upon a diſcontinuance the Original is determined. 5 H.7.40. 24 E.3.48. Br. reſum. 33.

2 All

F.N.B.14. 2 All certificatory writs, as if in a writ of right close brought in antient demesne the Tenant vouch a Foreigner to warranty, and after purchase a *Warrantia charta* returnable in the Common place against the vouchee, and there upon a *Superſedeas* to the Bayliff in antient demesne. Now if the plea of *Warrantia charta* bee determined or discontinued in the Common place, the Demandant in the Writ of right close may sue a Writ out of the Chancery, directed to the Justices of the Common place, to certifie the King in his Chancery of it. To the end that if it bee so, the Bayliff in antient demesne may proceed. So upon a *Monſtraverunt* F.N.B.16.c. sued against the Lord in antient demesne, and an attachment thereupon, because hee shall not bee driven to answer to the attachment till the Court be ascertained whether the lands bee antient demesne, or no: the Plaintiffs in the *Monſtraverunt* must sue a special Writ to the Treasurer, and Chamberlains of the Exchequer to certifie it. In like sort upon an *Indicavit* purchased F.N.B 52. because the Tythes amount to the fourth part of the value of the Church, the other may have the Kings Writ directed to the Bishop to certifie the King in the Chancery of the value of the Church, to the end that if it amount not to that value, hee may have a Consultation. So upon surmise made in F.N.B.59.b. the Chancery, that the Kings Committee of a ward hath done waste, a writ shall go forth to the Eschetor to certifie the King thereof.

And

and ſo in all other like caſes.

3 *Certiorare* **to remove a Record** out of a Court of Record **into the Chancery**, for no Record ſhall bee removed into the Common place, nor no endictment taken in the Countrey into the Kings Bench immediately by any *Certiorare*, but firſt it muſt bee certified into the Chancery by a ſurmiſe, and from thence ſent into the Common place, or Kings Bench, as the caſe is, by a *Mittimus*. And every Writ of Error is a *Certiorare* in it ſelf. 36 H.8.Br. Certior.20. 12 E.4.11.

4 **To remove ſuits out of Court Barons**, for a *Recordare*, *Pone*, or ſuch like, are to no other intent but onely to remove ſomewhat into the Kings Court, and are in the nature of a *Certiorare*. And upon the remove the *recordare* or *pone* is determined, for the plea ſhall not bee holden upon them, but upon the plaint that is removed, and the firſt pledges ſhall ſtand. **And theſe may bee without ſhewing any cauſe in the writ, if the remove be at the plaintiffs ſute: but not without ſhewing good cauſe in the writ, if it be at the Defendants ſute.** As being to remove a plea in a Writ of right to ſhew that the Bayliff is heir to the land, or taketh upon him to maintain the matter to have part of the land, or that the Tenant hath alledged baſtardy, or pleaded a forreign plea, or joyned the miſe upon the grand aſſiſe, &c. being to remove a plea in a replevin by plaint, to ſhew that the Defendant avoweth for damage feaſant, and the 3 H.6.3. Fitz.N.B.4.b. Fit.N.B.70.b.

the Plaintiff juſtifieth by reaſon of Common of paſture, which is a plea touching Freehold, and therefore ſhould not bee without Writ.

Theſe are either to remove pleas by writ, or by plaint without writ, **Of the firſt ſort are a** Tolt **and** Pone.

Old N.B.2. *Fit.N.B.4.a.* *Tolt* or *Tollas* **is for the plaintiff,** but never for the Tenant **to remove a writ of right out of the Lords Court into the County Court.** And becauſe this being at the plaintiffs ſute may bee without any cauſe, therefore this clauſe is put in every writ of right patent, *Et niſi feceris vice comes faciat.* *Pone* **is to remove into the Common place in all other caſes,** *viz.* (*b*) ſave onely in the caſe of a writ of right to bee removed out of the Lords Court into the County Court. As (*c*) writs of right removed into the County Court by a *Tolt*, (*d*) *Juſticies* and *Vicontiel* writs in the County Court, replevins by Writ either (*e*) there or (*f*) in any other Court Baron. And all this indifferently (*g*) either at the Plaintiffs or at the Defendants ſute. So upon a (*h*) *native habendo* ſued in the County, if the Defendant alledge himſelf frank, the Lord is driven to remove it by a *pone*. **But a** pone **to remove a replevin by writ out of any other Court Baron then the County Court, cannot be without ſhewing cauſe,** though it bee at the Plaintiffs ſute.

Old N.B.ibid.

(*b*) F.N.B.4.b.c

(*c*) F.N.B.ibid.

(*d*) F.N.B.125.f *In admeaſ. of paſture.*

(*e*) F.N.B.69.m

(*f*) F.N.B.70.a

(*g*) F.N.B.69.m & 70.a *in a replev.* & 125.f. *in Admeaſ. of paſture.*

Old N.B.2. in a writ of right.

(*h*) F.N.B.77.e

Of the ſecond ſort are a *Recordare*, **and** *Accedas ad Curiam.* **In both which nothing but**

3 H.6.30.

but the plaint shall be removed, (a) though they be at issue. (a) F.N.B. ibid

Recordare (b) **is to remove plaints in County Courts.** Every (c) Writ of false judgement upon a judgement given in the County Court is a *Recordare* in it self. (b) F.N.B. 70. b. (c) F.N.B. 18. a. b.

Accedas ad curia, **is to remove plaints in any other Court Baron.** (d) Every Writ of false judgement upon judgement given in any other Court Baron then the County Court, is an *Accedas ad Curiam* in it self. F.N.Br. 70. b. & 18. d. (d) F.N.B. 18. d

This also upon good cause shewed in the writ, **lyeth for the Tenant to remove the plea in a Writ of right out of the Lords Court immediately into the Common place.** F. Nat. Br. 4. a.

5 *Mittimus* **to send a Record out of the Chancery,** whether being certified thither before by a *Certiorare*, or howsoever else being there, **into another Court of Record,** to the end they may proceed upon it. **But the Chancellour may send such a Record by his own hands,** without any *Mittimus*, if it please him. F.N.B. 22. g.

6 *Procedendo* **to proceed in suits.** As if the Lord upon a Writ of right sued in his Court will not hold his Court, the Demandant may have this Writ unto him, if a man cause himself to bee essoyned of the Kings service in any action where indeed hee is not in his service, the Plaintiff or Demandant may have this Writ directed to the Justices commanding them to proceed. So where the Justices in any Court delay the Pl. or the F.N.B. 3. c. F.N.B. 17. b. F.N.B. 24.

the Defendant, and will not give judgement for him where they ought to do it, the party grieved ſhall have a *procedendo ad Judicium*.

Old N.B. 32. **Of this nature is a writ of conſultation to proceed in the ſpiritual Court, when one ſuing there for matters belonging to that Court,** as for matters teſtamentary, or concerning Matrimony, &c. **is by a prohibition reſtrained to proſecute the ſuit.**

Statutes.

24 E. 1. *De conſultatione.* A Conſultation to bee awarded by the Chancellour or chief Juſtice of the King, upon ſight of the Libel at the inſtance of the Plaintiff.

50 E. 3 cap. 4. Upon a conſultation once duely granted, the Eccleſiaſtical Judge may proceed in the ſame cauſe notwithſtanding any other prohibition. So the matter of the Libel be not enlarged, nor otherwiſe changed.

F.N.B. 249 g. 7 **A writ of Mainprize to ſet at liberty one baylable finding bayl,** that is to ſay, ſufficient perſons to bee bound for him as ſurety **to anſwer the action,** which in reſpect of delivering him into the hands of his friends the Sureties is called Bayl, in reſpect of their taking of him is called Mainprize.

4 *E.* 6 *Pl.* 87. **Such perſons baylable be they which are taken upon a** *Capias* **original.**

Writ

But not the Defendant in (a) appeal of Maym, if the Maym bee hayneus: nor the principal in an endictment or appeal of Felony, (c) nor the accessary after attainder of the principal (d) nor any in high treason, where all be principals.

(a) 6 H.7.1.c. weſt.1.c. 5 Stam.71. & 72 In caſe of the death of a man.
(c) Stamf. ibid.
(d) Div. of Courts fol.

Statutes.

Weſtm.1.cap.15. Such as are accuſed of receit of Felons of commandement, or force, or of aid in Felony done, and a man appealed by approver, after the death of the prover (if hee bee no common Thief, or defamed) ſhall bee let out of priſon by a ſurety.

8 Recaption is for him whoſe goods being diſtreyned befor for rent or ſervices, but not for damage feaſant: for there as for as they are ſo found upon ones land, it is lawful to diſtrein them. For every time is a new wrong, and a new treſpaſs, are diſtreyned again for the ſame thing, hanging the plea in the County Court, or before the Juſtices. Though the firſt diſtreſs were lawful, and though the rent or ſervice were behinde again, or not: for by the firſt diſtreſs hee ſhall have a Return till hee be ſatisfied of all. And here the goods diſtreyned, muſt bee the ſame parties goods. For if the Lord firſt diſtreyned his Tenant, and after the beaſts of a ſtranger, no Recaption lyeth. But upon a diſtreſs of two mens beaſts firſt, and after of the beaſts of one,

F.N.B.71.c. Fit.ibid. Fit.ib.72.g. Fi.ib.72.c.& 71 c. Fit.ib.71.b. Fit.ib.71.i.

Fit.ib.71.e. one, it lyeth for that one: ſo upon a di-
Fit.ib.71 f. ſtreſs of beaſts which a man hath in common with another, and after of ſuch beaſts as are his own alone. Alſo hee that taketh the ſecond diſtreſs muſt bee the ſame party that diſtrained firſt: as if the Lord diſtrained firſt, and then his ſervant or Bayliff diſtraineth again by his commandement, or without his commandement, if hee agree afterwards to it, as by joyning with his ſervant or Bayliff when they pray in aid of him. Otherwiſe not, though the Bayliff make coniſance in his right: for it may bee hee hath no notice of it, and the party hath remedy againſt the Bayliff by an action of Treſpaſs. But this Writ lyeth not
Fit.ib.71.d. after *Non ſutes* in the replevin, becauſe there the plea is not hanging: but before avowry in the Replevin it doth, for the Plaintiff in the recaption may well count that the Defendant took them for the ſame cauſe; And that may make a good iſſue, which the Inqueſt may take notice of well enough
Fit.ib.73.e. by the evidence of the parties. But upon a Replevin ſued by plaint or Writ in a Franchiſe, and not before the Sheriff or the King Juſtices, no recaption lyeth, though hee bee diſtrayned by the ſame party again, and for the ſame cauſe, for the King will not direct this Writ but to the Sheriff. But if the ſute bee removed before the Juſtices by a *Pone* or *Recordare*, there a Recaption lyeth as well for a diſtreſs before the *Pone* or *Recordare*, as afterwards. And here the Plain-

tiff

tiff shall recover dammages for the second taking onely, because it is a contempt against Law, for which the defendant shall be fined if hee be convict before the Justices, or amerced, if the conviction be before the Sheriff; but shall recover no dammages for the taking nor the detaining of the beasts. And therefore here the defendant shall not make avowry, as hee should in a Replevin, but onely may justifie the taking, as in an action of Trespass.

9 A writ *De magna assisa elegenda* to the Sheriff, to summon four knights to chuse the grand assise, when the mise is joyned thereupon in a writ of Right. F.N.B. 4. f.

And this is a meer judicial writ issuing out of the Common place when the plea hangeth there. But when the plea is in the Lords Court, or in the County Court, then it is an original writ out of the Chancery.

10 A Certificate *De Assise* upon a verdict given in an assise that is not perfect, whether not well examined by the Justices, or not fully inquired of by the Jury, to bring in the same Jurors to give a more perfect one. And this must bee sued in the same County where the assise was sued, and may be as well before other Justices, as those that took the assise: if the Kings Bench, or Common place be in the County where the Assise passed, then this writ may be sued there. 7 E. 6. Pl. 85. F.N.B. 181. d.

Fit. ibid. d. And beside the writ it self directed to the Sheriff, the Justices must have a patent made unto them as in the assise it self.

F.N.B. 77. c. 2 El. Dy. 173. 11 *Proprietate probenda* unto the Sheriff, to inquire whether the property be to the plaintiff or defendant, when upon a replevin sued, the defendant claimeth property, which determineth the Sheriffs power to make Replevin.

2 El. ibid. (a) 1 E. 4. 9. (b) 2 El. ibid. And this also may be meer judicial issuing out of the Kings bench (a) or common place, (b) and returnable there.

Secondly hither belong those that be prohibitory, or restrain from doing some thing where the prohibition it self is in stile of a Summons. And after that, the

F.N.B. 163. d. Old N.B. 30. Old N.B. 28. process is an attachment and distress. So in every writ which is upon a prohibition broken, as a *quare non admisit, quare incumbravit*: for every breach of a prohibition is a contempt in it self.

Of this sort are

1 Prohibitions to restrain the party from suing in an inferior court that ought not to hold plea of it: as in the spiritual

(a) Old N.B. 30. Court, for (a) any plea that concerneth not matrimony and wills, as for goods or

(b) 22 E. 4. cons. 2. debts, &c. and (b) though it bee of matters for which the Plaintiffs have no remedy by the Common Law, as of a covenant broken without specialty, or debt, &c. against executors upon a simple Contract made by their Testatour. Or *Pro læsione fidei* against one which hath waged his Law

in an action of debt upon a ſimple contract, and ſworn falſly. So if the Bayliff in a Court Baron hold plea of matter above 40 s. the Defendant may have a prohibition. And theſe prohibitions may bee directed to the Judge himſelf, not to hold plea in thoſe caſes, as well as to the Sheriff, to reſtrain the party from ſuing. 19 H. 6. Old N.B. 31. F. N. B. Ph.

Such a prohibition is an *indicavit* for the Defendants patron when the right of the moſt part of ones tythes is in demand in the ſpiritual Court, betwixt two Clerks claiming from ſeveral patrons. So as the *indicavit* is alwaies between four perſons, whereof two are patrons, and the other two Clerks. One claiming to hold of the avowſon of one patron, the other of the other patron, for an avowſon being a lay hereditament, whereſoever the patronage ſhould come in queſtion the Common Law is to decide it: But where that is not to come in queſtion, the ſpiritual Court ſhall decide it, by ſuit in that Court called ſpoliation. As a parſon accepting another benefice, or created a Biſhop, and having a diſpenſation to keep his parſonage, ſhall have a ſpoliation in Court Chriſtian againſt another *Incumbent* preſented by the patron, and then ſhall come in debate whether they have plurality or diſpenſation, or no. 12 E. 4. 13. Fit. N B. 56.

And this *Indicavit* lyeth, though it bee but the right of the twentieth or thirtieth part of tythes that is in demand, for at the 38 H. 6. 20.

Common Law the Court Chriſtian had no power to hold plea of any part of diſmes, but a prohibition lay till the Statute of **weſtm. 2. cap. 5.** which will have an *Indicavit* to bee of tythes to the value of the fourth part of the Church at the leaſt. But before that, it might have been of the 10 part, and the patron thereupon might had a writ of right, whereupon at the Common Law there was a writ of the avowſon of the tythes of five acres, or ten acres, or one acre. But now ſince by the ſame Saute an *Indicavit* ſhall not bee granted of leſs than the fourth part, therefore there is a writ of the avowſon of the tythes of the fourth or third part. But at the Common Law there was no ſuch writ.

Statutes.

Weſtm 2. cap. 5. When the Parſon of any Church is diſturbed to demand tythes in the next Pariſh by a writ of *Indicavit*, the Patron of the Parſon ſo diſturbed ſhall have a writ to demand the avowſon of thoſe tythes. And after the plea deraigned in the Kings Court, then it ſhall proceed in the Court Chriſtian.

18 E. 3. **cap. 7.** *Pro clero* & **cap. 47.** Writs of *Scire facias* to anſwer of diſmes in the Chancery, and to ſhew why ſuch diſmes ought not to bee reſtored the demandants ſhall not from henceforth bee granted. Saving the Kings right as hee and his anceſtors

ſtors were wont to have.

2 A *Superſedeas* **to ſtay any further proceeding in the ſuit.** As if a writ of treſpaſs *vi & armis* be brought in a Court Baron, if upon a writ of right cloſe brought in antient demeſne, the demandant and tenant put themſelves upon the grand aſſiſe, or the Tenant vouch a foreiner, or plea a forein plea, which cannot bee tried there, if a Clerk of the Chancery, or any of the ſervants of the Chancellour, or Lord keeper of the great Seal be ſued in any other place for a treſpaſs, or other matter. F. N.B. 239. d. F. N.B. 13. g. F. N.B. 41. h.

Of this nature are, a writ of peace for the Tenant upon a writ of right brought in the Lords Court, vouching one to warranty out of the power of that Court, wee call it a foreine voucher, **or ſoyning the miſe upon the grand aſſiſe to have the matter reſpited till the Juſtices in Eyer come thither, which if he bring not at the next Court day,** after ſuch voucher or miſe joyned, **he loſeth his tenancy,** the reaſon is, becauſe the Lord cannot make a grand aſſiſe to come. But if battail be joyned, that ſhall bee determined there, and after ſuch a writ brought, the plea may proceed by leave of the Juſtices. As if the vouchee come before them, and enter into warranty, they may award that he ſhall go to the Court of the Lord, and there warrant to the party that vouched him, and aſſign a day certain of the Court, and alſo give leave and power to the Lord to hold his Court. 13 E. 3. *vouch.* 269. c. E. 1. *droit.* 45. c. E. 1. *ibid.* e. E. 1. *ibid.* 13 E. 3. *ibid.*

F.N.B.77. f. *De libertate probanda* for the Defendant upon a *Nativo habendo* sued in the County, claiming to be frank to the Sheriff to auctours the plea before the Justice in Eyer.

Old N.B. 46. And therefore must bee brought before any *pone* delivered by the Lord to the Sheriff to remove it. And this is a *Supersedeas* to the Lord not to proceed till the day of adjournment, not to ceise the villein till the plea discussed.

Statutes.

25 E. 3. cap. 18. The Lord may seise the body of his villein, notwithstanding that a Writ *De libertate probanda* be hanging.

F.N.B.167. c. *Idemptitate nominis* for one molested by a Suite against another of the same name. As if hee bee taken by a *Capias* or *Exigent* awarded against the other, or distreined by process out of the Exchequer. And this Writ shall bee either to the Escheator, or Sheriff, according as hee is vexed, or his goods taken by either of them, to surcease against him, or against his goods.

3 Protections *cum clausula volumus* when the King in respect of the Defendant being in his service taketh him, for the Plaintiff can never have a protection for him, unless it bee in special causes, where the Plaintiff doth become Defendant, into his protection for one year to bee free from all suites.

F.N.B.28. g.

39 H. 6. 38.

writs

Writs of Dower, *Quare impedit*, Assises of novel disseisin, and pleas before the Justices in Eyre are accepted. Therefore it shall for that time save all defaults. So as upon a protection (cast in a plea personal) at the *Nisi prius*, and repealed at the day in Bank, yet the enquest shall not be taken by default, for the default was once saved. Otherwise it is of a protection disallowed at the day in Bank. And a man may excuse his default at a *Grand cape*, or *petit cape* by casting of a protection. But a protection can indure no longer than for one year, for otherwise it might be for twenty, thirty, or a hundred years, and by the same reason for a thousand years, which were a great inconvenience and dilherison to the party. But a protection for one year is not so, for after the year ended hee may have a resummons, and proceed in his sute: yet the King after the first year ended may take him again into his protection for another year, though it bee space of ten, or twenty years together, for in that case appeareth at the first no mischief not inconvenience, as there doth when hee taketh him into his protection for so many years at once.

Old N.B. 21.
39 H. 6. ibid.
21 H. 6. 20.
F. N. B. 29. b.
39 H. 6. ibid.

Statutes.

5 E. 3. cap. 7. No protection shall be allowed in writs of Attaint.

This kinde of protection is double. *Protectio quia profecturus*, when he is to go be-

39 H 6. 38.

pond Sea in the Kings buſineſs.

F. N. Br. 28. c. *Protectio quia moratur*, when hee ſtayeth there about it. Of which nature is alſo a protection *quia in priſona*, when being ſent beyond Sea in the Kings wars, hee is there taken and detained in priſon. The going or ſtaying about the Kings buſineſs in the marches of Scotland, or ſuch like places is counted as beyond Sea. But a protection *quia moratur ſuper altum mare*, is not good, for it cannot bee entended that hee doth abide there.

F. N. B. 28. g. 39 H. 6. 39.

Statutes.

13 Ric. 2. cap. 6. A protection in reſpect of going beyond Sea diſallowed (except it bee in voyage Royal, or buſineſs of the Realm) where it beareth date after the ſute commenced. And the Lord Chancellour hath authority to repeal it, if hee go not in convenient time, when hee returneth.

A Statute of protection 33. E. 1. Averment is given againſt petition for the Kings ſervice.

1 Ric. 2. cap. 8. Protection (*volumus*) not allowable for victual taken or bought upon the voyage or ſervice, whereof the protection maketh mention, nor in treſpaſſes and other contracts made after the date of the ſame protection.

Prerogative

Prerogative.

The King may take his creditor into his protection, that no other creditor shall sue or arrest him, **till the King be satisfied,** which is also a protection *cum clausa volumus*. F.N.B. 28. *b.*

Statutes.

25 E. 3. **cap.** 19. A Creditor shall have an action and judgement against the Kings debtor, notwithstanding such a protection. But not execution, unless hee take upon him to pay the King, and then hee shall have judgement and execution of both debts, as well of that due to the King, as to himself.

He may also by a writ called *Warrantia diei*, **rehearsing that one which should appear in proper person,** whether it bee the plaintiff or defendant, **is in his service, will that for one day no default be recorded upon him.** So as if the tenant in a *præcipe quod reddat* make default at the grand *Cape*, or *petit cape*: yet before judgement upon that default, the King by his writ may make that it shall not hurt him. And this standeth with reason, because every man is bound to serve the King in his affairs. Neither is it material whether hee be in the Kings service or not, when the King certifieth that hee is: for it seemeth by the words of the writ, that the King by his prerogative may for one day warrant his default. And this writ cannot be granted but by the King himself. F.N.B. 17.

19 H.6. 57. 4 *Essoyne de malo lecti*, is a writ to warrant an essoyne of lying sick a bed, cast by the Tenant in a writ of right: Commanding four Knights to see him, and if he be sick, to give him day at the end of the year, and the day for so long adjournment is in that essoyne.

Statutes.

Westm. 2. cap. 17. In an essoyne *De malo lecti*, the demandant may aver by enquest, that the Tenant is not sick, nor in such plight but that hee may come before the Justices. Such an essoyne shall not lye in a writ of right between two claiming by one descent.

F. N.B. 37. f. 5 ¶ *Ne admittas* for either party, plaintiff or defendant, in a *quare impedit*, or assise of darrein presentment to the ordinary, not to admit the others Clerk till the matter be discussed.

F.N.B. *ibid.* And this must bee sued within six months, and not after, for after the six months it is lawful for the ordinary to present by lapse, but being sued within the six months, the ordinary may neither himself (*b*) collate within six months (but afterwards by lapse hee may) nor (*c*) admit the others Clerk at any time, (*d*) though it be after the six months, and though it be found for him by a *Jure patronatus*, which is a commission that the ordinary may grant to enquire who is the right patron.

(*b*) F.N.B. 48. l.
(*c*) *Fit. ibid.*
(*d*) F.N.B. 48. b.

6. ¶

6 A *quare incumbravit* for him that ſu- F.N.B. 48. c.
eth a *Ne admittas*, and after recovereth in a
quare impedit, or aſſiſe of darrein preſent-
ment, though it bee after the ſix months,
or before recovery no *quare incumbravit*
lyeth against the ordinary for incombring
the Church, contrary to the *Ne admittas*. F.N.B.48. h,
But of a collonation or admittance before a
Ne admittas ſued, no *quare incumbravit* (but
onely a *quare impedit*) lyeth, for the ordina-
ry can have no notice till the *ne admittas*.
But no *ne admittas*, nor *quare incumbravit* F.N.B.48. q.
lyeth in a writ of right of avowſon, though
the Church become void hanging the writ,
and the Biſhop do encomber it, for the de-
mandant there ſhall not recover the pre-
ſentment but the avowſon. And if hee have
title to preſent, hee may preſent, and upon
diſturbance have a *quare impedit*.

CHAP. 45.
Of Judgements.

10 El. Dy. 26, 8. *The writ of falſe Judgement ſhall bee Recordare fac. le. quelam- quæ fuit in eadem curia, and not quæ eſt, for by the judgement loquela is determined.*

THus farre of Suites. Judgement is the Courts final determination of that ſuite.

Upon Judgement againſt the King is a petition, hee is preſently out of poſſeſſion. And therefore every Judgement is in it ſelf a *moveas manu*, or an *ouſter le-maine*. In a writ of right the Judgement after ſuite joyned is final on either ſide, 10 E.3. Stam. *Prær.* 78.

not

not onely when it passeth by verdict, or vanquishing of the others Champion, but where the demandant is (c) *non suit*, or the (d) Tenant maketh default, or the (e) vouchee after such an issue joyned by him, departeth in despite of the Court, &c.

(c) F.N.B. 6.
3 El. By. 301.
(d) F.N.B. 6.
(e) 26 H. 8 8.
F.N.B. 31. d.

Prerogative.

Against the King Judgement is not final, but is alwaies with a *Salvo jure Regis.*

5 E. 3. 50. **Recoveries in a writ of right binde all strangers not claiming within the year.** As being suffered by a disseisor, it bindeth the disseisee by his non clayme. **Tenant for life suffering a wrongful recovery, it shall prejudice his right that hath the inheritance, though he be prayed in aid and make default,** for no aid prayer is there necessary, in as much as the other being tenant of the free-hold, a recovery is good against him. **But that after the death of Tenant for life, he may falsifie it by action** of *Ad terminum qui preteriit*, or writ of right, which wee call falsifying of recoveries. But he cannot enter (a) neither can lessee for years at the Common Law falsifie for having but a Chattel derived out of a free-hold, there is no reason hee should falsifie a recovery which draweth the fee-simple out of the lessor. Also the present estate upon which the lease depends being destroyed, the lease must needs be extinct.

34 H. 6. 2.
4 H. 7. 3.
24 H. 8.
Br. fau. rec. 41.
(a) 26 H. 8. 2.

Statutes.

Statutes.

14 Eliz cap. 8. Every fraudulent recove- against any Tenant for life, or where- on any Tenant for life, or hee that hath ght to estate for life is vouched, shall bee oid against him in the reversion, or in the mainder, unless it bee by his own assent pearing by record.

21 H. 8. cap. 15. Termors for years, or in execution of Statute-staple, Statute Mar- ant, or *Elegit*, may falsifie recoveries one- for their own Term in such sort as Te- nts of the free-hold, neither party nor pri- to the recovery might at the Common w.

In a writ of dower by gardein in soc- against gardein by Knight-service, shall at his prayer be adiudged to en- her self wholly of the land in soccage. *Lit. 9.*

and this is called *Dower de la plus beale.* But *Park. 88.* h dower shall not bee where the woman is rdein *en fait* by Knight-service, nor where the husbands Lands were holden in soc- ge, and shee brings her writ of dower a- inst the heir: nor where shee brings it a- inst her husbands feoffe with warranty, for e may vouch the heir.

A debt acknowledged in Court of Re- d either to the King or to a Common, is the nature of a Judgement, and called a Recog-

Recognisance. And therefore such a matte
acknowledged by an infant, cannot bee a
voided, but during his nonage onely. As
(a) 18 E. 4.13. (a) fine by writ of error, a (b) Recogn
(b) 7. El. Dy. 232 sance, Statute, or such like, by an *Audita*
18 E. 3.5. *querela*: for it shall bee tried by inspection o
the Court, whether hee were within age
or no.

(c) 41 E. 3. tresp. 199. (d) 40 E. 3. 42. (e) 1 Mar. Pl. 99. 3 H. 7.12. 4 E. 6. Br. Cor. 185. (f) 21 H. 7. 31. (g) 3 H. 7.12. (h) 12 E. 3. Cor. 378. (i) 3 Mar. Dy. 120.

In appeals of (c) mayme, enditement of appeals of (d) felony, the accessary shall not be compelled to answer till attainder of (e) all the principals, by verdict, outlawry or though it bee by taking him to his Clergy, or abjuration. So as if the principal dy (f) or have his (g) pardon before, or if two men be endited, one as principal, the other as accessary, and the principal be afterward attainted of another felony and hanged the accessary shall bee discharged. And (h) if one of the principals bee not attainted the Accessary shall not recover damages against the Abettor, for hee is not *legitime modo acquietatus*. But in case of high Treason all offenders are accounted principals and there is no accessary at all.

Stam. 133.

Hee that is, or by possibility may be within orders, for one being within orders (if hee shew them, or the ordinary certifie so much) shall have his Clergy, whether hee can read or no. Otherwise hee must be able to read a verse, namely, a Deacon at the least may have the benefit of his Clergy, save him either from Judgement when the Clergy is prayed before, or from execution

if it be prayed after, **if he be found culpable** by verdict, or his own (*k*) confeſſion either before the Coroner, or the Juſtices **of any** (*k*) *Stam.* 138. *d*
fellony, where life or member is to be loſt, bee it upon an inditement or appeal, but (*l*) not for killing a man by misfortune, (*l*) *Stam.* 124.
or *ſe defendendo*, nor yet for petty Larceney, for in theſe caſes hee is not to have Judgement of life or member. No more in caſe of high Treaſon, or petty Treaſon. And ſuch a (*m*) Clerk might indeed by the antient (*m*) *Stam.* 130. *c.*
Law have had his Clergy before hee were endited. But now hee ſhall not have it upon his arraignment, unleſs hee plead to the felony, and be found guilty: for otherwiſe hee ſhould loſe his goods by an enqueſt of office, to which hee could have no challenge, as hee may have to this. But yet hee may wave this benefit, and pray his book after the enqueſt, and before their comming back. In which caſe notwithſtanding, the verdict afterwards ſhall bee taken. And that is in *favorem vitæ*: becauſe if the Jury finde him not guilty, hee ſhall be diſcharged. **And this poſſibility (there being no other impediment)** as if it be a woman, a blinde, or a maymed man, **ſhall be tried by the Judges.** And therefore if the ordinary challenge him, where hee readeth not as a Clerk, hee ſhall bee fined, and the party hanged. Or if *Stam.* 123. *d.*
hee refuſe him, when hee doth read as a 9 *E.* 4. 28.
Clerk, the ordinary ſhall be fined, and the party diſcharged, for the Court are Judges of his reading. And the ordinary is there onely

onely to challenge him for his Clergy, for
9 E. 4.28. the entry is, *Legit ut Clericus ideo tractatur ordinario*, **by his ableness to read a verse**, though hee cannot read without ſpelling. But if he can read but here a word and there a word, and no three words together, *quære* whether that be ſufficient.

Clergy is the delivering of him to the ordinary to be kept in prison.

Stam. 138. c. **If it be before Judgement,** in which caſe wee call him a Clerk convict, **hee ſhall be tried there by a Jury of Clerks. And**
Stam. 138. **therefore purging himſelf ſhall go at large.** Therefore is a writ to command the ordinary to admit him to his purgation. **Not purging himſelf, but being found culpable by thoſe Clerks, hee ſhall be only degraded.**

Stam. 139. b. **But upon an appeal** of Robbery, or ſuch like, **no purgation ſhall be admitted.** The reaſon ſeemeth, becauſe then the Plaintiff in the appeal ſhould recover his goods without cauſe, when by the purgation it did appear that the other was not guilty of the felony.

Stam. 108. **A Clerk convict ſhall not anſwer to any offence committed before.**

Prerogative.

5 E. 6. Br. *forf.* 113 Stam. 138. **A Clerk convict forfeiteth his chatels:** And ſhall never have reſtitution though hee make purgation. **Notice muſt be given to the King of the time before the**

party

purgation make purgation. If the Clergy bee Stam. 138 c.
not Judgement, in which case wee call him a Clerk attaint, he shall remain in perpetual prison.

Statutes.

25 H. 8. cap. 3. Revived. 5 E. 6. cap. 10. One arraigned upon an Endictment of petty Treason, wilful burning of houses, Murder, Robbery, or other Felony, according to the meaning of the same Statute, if hee stand mute of malice, or froward of minde, or challenge peremptorily above 20, or will not directly answer, shall lose his Clergy, in such manner as hee should, if upon the arraignment hee had been found guilty.

25 E. 3. *pro clero*, cap. 4. Convict of petty Treason shall have it.

18 Eliz. cap. 6. None in felonious Rape, Ravishment, nor Burglary.

18 Eliz. cap. 6. None in carnal abusing a woman within ten years of age.

25 H. 8. cap. 6. 5 Eliz. cap. 17. None in Buggery.

5 E. 6. cap. 9. None for him that robbeth any person in any part of his dwelling house, booth, or Tent, in any Fair, or Market, himself, his wife, children, or servants then being there, or within the Precinct thereof, either sleeping or awake.

4 And 5 Ph. and Mar. cap. 4. None for him that maliciously commandeth or hireth any to commit petty Treason, or wilful Murder, or Robbery, in any dwelling house, or in, or near any high way, or within the marches of *England* against *Scotland*, or wilfully to burn any dwelling house, or any part thereof, or any Barn having Corn therein.

25 H. 8. cap. 3. and 5 E. 6. cap. 10. He that doth a Robbery or Burglary in one County, and is taken with the goods so robbed or stolen, in another County, shall lose his Clergy there, as hee should do where the Robbery or Burglary was committed.

4 H. 7. cap. 13. 1 E. 6. cap. 12. Grantable but once to one person, except he be within orders.

4 H. 7. cap. 13. Hee that asketh his Clergy the second time shall at a day certain bring his letters of order, or a certificate.

4 H. 7. cap. 13. Hee that hath his Clergy shall bee marked in the hand, with an M. if he were convict of Murder, with a T. if hee were convict of other Felony.

1 E. 6. cap. 12. Lords of the Parliament in all cases where Clergy lyeth at the Common Law, or is restrained by Statute, shall upon his prayer bee adjudged as a Clerk convict, though he cannot read.

8 Eliz. cap. 4. and 18 Eliz. cap. 7. After purgation hee ſhall bee put to anſwer to any ſuch offence (committed before his admiſſion to the Clergy) whereupon Clergy is not allowable, and whereof he was not before endicted and acquited, convicted, or attainted, or pardoned, and ſhall bee demeaned in all things, as if hee had never been admitted to his Clergy.

18 Eliz. cap. 7. Hee that is allowed Clergy ſhall not bee delivered to the Ordinary, but after burning in the hand ſhall bee delivered forthwith by the Juſtices out of priſon: yet for further correction, they may detain him in priſon, ſo that it bee not above a year.

Outlawry is a Judgement, which in caſe of criminal offences wee call an Attainder **in it ſelf**. So as hee which is indicted of treſpaſs and outlawed ſhall pay a fine, hee which is outlawed for felony, forfeiteth his lands and goods; and this fine and forfeiture remaineth, though hee purchaſe a Charter of pardon afterwards. And there is a writ of Eſchete of land for Felony, *pro quo ut legatus fuit.*

So is abiuration an Attainder in it ſelf (and (a) that the ſtrongeſt that can bee being by his own confeſſion) and a (b) forfeiture of his lands. And there is a writ of Eſchete of land for felony, *pro qua abjuravit regnum.* And therefore (c) hee that is hanged upon Judgement againſt him, and becommeth alive again, cannot abjure (but

(a) *Stam.* 122 c
(b) 4 *El. Pl.* 262.
(c) 3 *E.* 3. *Cor.* 335.

an abjuration in that case is in escape; for one cannot have two Judgements for one offence.

2 H.4.24. 8 R.2 avowry 194.

The offendor upon a presentment in the Leet or Sheriffs turn shall be amerced.

Stam.167.e. *Stam.ibid.*

The Defendant in an appeal of Felony, being acquitted shall have judgement also to **recover damages against the plaintiff.** And if the Plaintiff be not sufficient, then Common Law and Common Reason will, that hee recover his damages against those that procured or abetted the Plaintiff to pursue the appeal. But these damages against the procurers or abettors were to bee recovered at the Common Law onely, by writ original, that is to say, by writ of conspiracy, and not otherwise.

Statutes.

westmin.2.cap.12. One being acquitted upon an appeal, or endictment of Felony, may have the abettors inquired, and have a Judicial writ for his damages against, if the appellant be not sufficient.

8 H.6.cap.10. An action upon the case given for him, that is duely acquit by verdict against every procurer of any Judgement or appeal of Treason, Felony, or Trespass. And like process shall bee therein, as in a writ of Trespass, *vi & armis.*

The plaintiff recovering shall be allowed his costs of suit.

CHAP.

CHAP. 46.

Of Judicial Writs to execute Judgements.

THese Judgements have their Judicial Writs belonging to them, both meer Judicial Writs for the execution of them, and new originals in the nature of Judicial Writs, to undo some matters concerning Judgements.

MEer Judicial Writs in real or personal actions, are either such as lye only within the year and day after the Judgement rendred, or a *Scire facias*.

Those of the first sort are between the parties to the recovery, for otherwise though it bee within the year, hee that recovereth is driven to his *scire facias*, as if it bee for debt or damages recovered against a sem sole, who afterwards taketh a husband, or by or against ones Predecessor or Testator, **and in the same Court where the recovery was**, for if the Record of a recovery in an assise of novel disseisin bee removed within the year into the Chancery by a *certiorare*, and from thence to the Common place by a *Mittimus*, or removed by Writ of Error out of the Common place into the K. Bench, and the Judgement affirmed within the year, yet the party is driven to a *scire facias*. So if a fine executory be remo-

14 H. 7. 15. 19.
15 H. 7. 5.
38 E. 3. *Scire fa.* 77.
14 H. 7. &
15 H. 7. *ibid.*

ved out of the Common place into the Treasury, and come back by *Certiorare* and *Mittimus*, within the year no execution shall bee by an *habere facias seisinam*, but by a *Scire facias* onely. But although the Judges of the Common place should all dye within a year after their judgement, and other Justices bee chosen, yet in that case execution might bee well enough without a *scire facias*; for it remaineth still the same Court, or if the Justices in Eyre come into the County, where one hath recovered before the Justices of Assise, they may award execution by a *Scire facias* within the year.

Of this kinde are upon recovery in real or mixt actions.

F.N.B. 167. *Habere facias seisinam* **to put him in possession upon a freehold recovered,** in an assise, *præcipe quod reddat*, &c.

Habere facias possessionem, **upon a Terme for years recovered**, as in an *Ejectione firme*, &c.

F.N.B. 38. b. & f **A writ to the Bishop to admit one Clerk upon a presentment recovered,** in a *Quare impedit*, or assise of darrein presentment: If the sute be against the Bishop himself, then this writ may bee to the same Bishop, or to the Metropolitan at the parties choice.

27 El. Cor. 11. Sir Wil. Herberts ca. **Those upon a recovery in personal actions, are of two sorts, either to have execution of the profits of his land, and Chattels, or a** *Capias ad satisfaciendum*.

But in Court Barons Execution is

onely

onely by distress, and impounding till the party be satisfied: for they have no power to sell or deliver the distress to the party, neither doth any execution by the body lye there. 4 H. 17. 22 Ass. Pl. 71.

In those of the first sort execution shall be of any (a) land which the party had day of the Judgement rendred, but for (b) chattels (though it be (c) leases for years) only those which he had day of the execution sued. (d) So as if he sell his goods *bona fide*, after Judgement, and before the writ of Execution sued forth, those goods are not liable to the execution, or if a writ of execution bee sued forth, and never returned, and after the Defendant alien his goods, and then the Plaintiff purchaseth another writ which is returned, yet execution shall not bee of those goods, for writs which never are returned are not of Record, nor of any force at all. But an alienation made after the *Teste* of that second Writ had been nothing worth.

(a) Old N.B. 165.
(b) 42 E. 3. 11. 2 H 4. 14. Old N.B. ib. 2 H. 4. ibid.
(c) 24 Eliz.
(d) 24 El. ibid.

Of this kinde are a *Scire facias*, and a *Levari facias*. *Fieri facias* to levy execution of his goods and Chattels only. *Levari facias* to levy execution of the profits of his land and Chattels. The form is, *Prædicta pecuniam de terris & catallis prædicti* (the Defendant) *levari facias, Ita quod ea habeas in cui' tali die præfat.* (the Plaintiff) *deliberand.* And this having words that he shall levy the mony of his lands and chattels, it seemeth that the Sheriff may take the Rents

15 El. Pl. 441 Old N.B. 165.

payable by the Tenants in execution of the debt, but not to ſeiſe the Land, and deliver it to the party.

Statutes.

Weſtm. 2. cap. 18. He that recovereth debt or damages in the Kings Court, may at his choice have a *Scire facias* of the land and chattels of the Debtor, or a Writ for the Sheriff to deliver him all the Chattels of the Debtor (except Oxen and plow-beaſts) and the moyety of his land by a reaſonable extent till the debt bee levied. And if hee bee ejected out of the land, hee ſhall have an aſſiſe; and afterwards a Writ of redſeiſin if need be.

11 E. 1. Stat. Acton Burnel. A debt acknowledged to a Merchant, before the Mayor of *London*, *York* or *Briſtol*, or before a Mayor or Clerk (appointed by the King thereunto) ſhall bee enrolled. And if it be not payed at the day, the Debtors moveables ſhall be priſed, and ſold in ſatisfaction by the Mayor, if hee have any within his juriſdiction, elſe by Writ out of the Chancery upon a Certificate of the Recogniſance thither. The Priſors to take them of the price if they priſe too high, if they have not moveables ſufficient, then he ſhall bee impriſoned till, &c. The like Proceſs againſt pledges, in default of ſufficient moveables of the principal.

13 E. 1. Stat. *De mercatoribus.* A debt acknowledged to a Merchant before the Mayor of *London*, or chief Wardein of a Town, which the King ſhall appoint, & other ſufficient men when they cannot attend, and before a Clerk which the King ſhall aſſign, ſhall bee enrolled, and if it bee not payed at the day, the Debtor, if hee bee a Lay-man ſhall bee impriſoned by the Mayor &c. if he be within their power, elſe by Writ out of the Chancery upon Certificate of a Recogniſance thither. And if hee agree with the Creditor within a quarter of a year after, then all the lands which were the Debtors, day of the Recogniſance made, and alſo his goods, ſhall be delivered to the Creditors upon a reaſonable extent. And of theſe lands ſo delivered, the coniſee being ouſted, ſhall have an aſſiſe or rediſſeiſin.

The Writs out of the Chancery ſhall bee returnable before the Juſtices of either Bench, and upon a *Non eſt inventus* returned, or that hee is a Clerk, Writs to all the Sheriffs where he hath lands or goods, ſhall go forth to deliver the ſame upon reaſonable extent, and to what Sheriff hee will to take his body.

The like Proceſs ſhall be againſt the pledges, if the money be not payed at the day.

If the Debtor or pledges dye, the Creditor ſhall have execution upon the lands of the heir at his full age.

27 E. 3. cap. 9. The Mayor of the Staple ſhall take Recogniſance of debt before himſelf

ſelf and the Conſtable of the Staple, whereupon default of payment being made, the debtors body ſhall bee impriſoned, and his goods ſold in ſatisfaction (if they bee within the Staple) elſeupon a Certificate in the Chancery, a Writ ſhall go out from thence to impriſon their bodies, and ſeiſe their lands and goods which ſhall bee returned in the Chancery, and execution thereupon in all reſpects, as in the Statute Merchant: Save that the debtor ſhall have no advantage of the quarter of a year.

5 H. 4. cap. 12. A Statute being once ſhewed in the Common place, and the proceſs afterwards diſcontinued, yet execution may afterwards bee awarded without ſhewing it again.

11 H. 6. cap. 10. He that is in priſon upon a Recogniſance, ſhall not be delivered out of priſon upon a *Scire facias* againſt the party and ſurety thereupon found to the King alone, but ſhall find ſureties ſeverally as well to the King as to the other party.

23 H. 8. cap. 6. Either of the chief Juſtices, or in their abſence out of the Terme, the Major of the Staple of *Weſtmin.* with the Recorder of *London* may take Recogniſances. And they ſhall bee executed in all reſpects as a Statute ſtaple.

27 Eliz. cap. 4. Every Statute Staple, or Mer-

Merchant, not brought to the Clerk of Recognisances within four months next after the acknowledging, to enter a true copy thereof, shall bee against all persons, their heirs, successors, executors, administrators, and assigns onely, which for good consideration shall after the acknowledging of the same Statute purchase the land, or any part lyable thereunto, or any Rent, Lease, or profit of it.

32 H.8. cap.5. Lands lawfully delivered in execution upon a Judgement or Recognisance, being evicted without any fraud or default in the Tenant before hee have levied the whole debt and damages, the Recoverer and the Recognisee shall have a *Scire facias* out of the same Court where execution was awarded, returnable there full forty dayes after the date. And thereupon a new writ of Execution of the nature of the former to levy the rest of his debt and damages, if the Defendant make default, or shew no good matter in bar.

Magn. chart. cap.8. The King shall not take the lands or rents of the debtors, if hee have sufficient chattels.

Magn. chart. cap.18. The goods of the debtor may bee attached after his death by the view of lawful men. That nothing shall bee medled with till the Kings debt bee payed.

33 H.

33 H. 8. cap. 39. All Obligations to the King shall be of the force of a Statute staple

Prerogative.

The King may have a *distringas* **to levy an amercement,** or such like, **by distress and sale,** whether it be an Amercement in the Leet or Sheriffs turn, or otherwise.

Old N.B. 167. 17 *El. Coo.* 12. *Sir Wil. Herberts c.* 2 *H.* 4. 6.

A *Capias ad satisfaciendum* **is to take his body in execution, for satisfying of the party. And this is always upon a recovery in a personal action where a** *Capias* lay. Therefore it lyeth not in any real action as in a Writ of dower, or other *præcipe quod reddat*, nor at the Common Law in debt, detinue, account, &c. but in actions of Trespass, and such like. **And here an exigent shall be awarded upon the first** *Capias*, for if he were taken by the *Capias*, he should pay unto the King a fine for a trespass adjudged against him.

40 *E.* 3. 25. 49 *E.* 3. 2. 49 *E.* 3. *ibid.*

Prerogative.

Of this nature are two special writs by the Kings Prerogative, *Capias pro fine Regis*, **and** *capias utlagatum.*

1 *H.* 7. 20. *Capias pro fine Regis*, **when the party is adjudged to pay a fine unto the King.**

Old N.B. 168. *Capias utlagatum*, **to take one outlawed** which is a kinde of Judgement and determination of the original Writ as appeared before.

Their

Theſe are the Judicial Writs within the year and day.

A *Scire facias*, which lyeth after the year and the day, **is to warn the Defendant upon recovery in real actions**, for in perſonal actions debt onely lay after the year, which is a new original till *Weſtmin* 2. *cap* 45. gave a *Scire facias*, **to ſhew cauſe why the plaintiff ſhould not have execution.** Therefore here the Defendant may plead matters growing after judgement rendred to ouſt the other of his executon, as outlawry, &c. or a releaſe of all actions, for in as much as hee may plead upon this *Scire facias*, it may well be called an action, though it bee but a Writ of execution. But notwithſtanding that a man which recovereth debt or damages, releaſe to the Defendant all actions, yet hee may lawfully ſue execution by a *Fieri facias*, *Capias ad ſatisfaciendum*, &c. for theſe cannot be called actions, **hereupon a *Nihil* returned, execution ſhall bee preſently againſt the parties to the Judgement.** But not (*b*) againſt Executors, or Adminiſtrators nor in a *Scire facias* upon a (*c*) Recogniſance or (*d*) Charter of pardon, upon an outlawry, or ſuch like, or to (*e*) repeal a patent, for in all theſe caſes two *Nihils* muſt be firſt returned. And therefore a *Scire facias ſicut alias* ſhall go forth. And the (*f*) Solemnities of ſummons, attachment, eſſoyn, view of land, &c. lye not in this Writ.

Old N.B.163.
27 El.Coo.12. in Sir Wil.Har.
Lit.116.
8 E.4.15.
1 El.Dy.167.
19 H.8.6.
22 H.6.41.
2 H.7.3.
24 H.8.Br. peremptory 63.
1 Eliz.ibid.
(*b*) *1 Eliz.ibid.*
(*c*) *1 El.ibid.*
(*d*) *1 El ibid.*
2 El.Dy.172.
8 E.4 ibid.
(*e*) *26 H.8.p. Dy.198.*
(*f*) *The Stat. Weſt.2 cap.46. doth ſo recite it.*

Statutes.

Statutes.

Westm. 2. cap. 46. For all things recorded before the Kings Justices, or contained in fines (whether contracts, covenants, obligations, services, or customes acknowledged, or any other things enrolled) a Writ of Execution shall bee within the year, so as the parties shall not need to plead: After the year a *Scire facias*. The like is of mesne who by Recognisance or Judgement is bound to acquit.

In case of life the Judge may command execution to be done without any writ.

(a) 22 Ass. pl. 71
(b) 22 Ass. pl. 86
(c) 13 Ass. pl. 2.
(d) 22 Ass. ibid.

A woman (a) quick with child (b) the trial whereof is by a Jury of women: and the writ for it is called a writ *De ventre inspiciendo*, shall for (c) once, and no more, be respited (d) execution, but it is no plea upon her arraignment, to say, that shee is enseint, but she must answer to the Felony.

Chap. 47.

Of new Originals in the nature of Judicial writs, to undo matters concerning Judgements.

The new Originals in the nature of Judicial writs to undoe some matters concerning Judgements, whether

ther it bee the Judgement it self, or the verdict whereupon Judgement is given, that so the judgement also may be undone, or to avoid the execution growing upon the judgement, are either writs grounded upon error, or an Attaint, and *Audita querela*.

Writs grounded upon Error, are a writ of Error and false Judgement, both which lye upon any Error in the proceeding, as well in *Redditione executionis*, as upon a *Capias ad satisfaciendum*, awarded for damages recovered in a real action, as in *Redditione Judicii*. 16 H.7.6.

But Error in Proces, may the same Terme be reformed in the same Court, Whether it bee in the Kings Bench (*a*) or Common place (*b*) and that by Writ or without. (*a*) 7 H.6.28. (*b*) F.N.B.21.*b*

The Proces here is a *Scire facias*. 12 E.4.11.

The party bringing a writ to reverse error in the Judgement, may have a *Supersedeas* to stay execution till the error bee discussed, Whether it be matter apparent, or matter *en fait*, that is alledged for Errour. But no such *Supersedeas* shall bee upon an Attaint; for that which is found by the oath of twelve men is intended true till it be reversed, but it may as well be intended that there is an error in the Record, as not. 5 H.7.25.

A writ of Error is upon an Error in Court of Record.

And may be sued in the Kings Bench, or Parliament.

In

(a) F.N.B.21.
(b) 13 El.pl.393
(c) 14 H.7.1.
8 El.Dy.250.
21 El. So Holden in the Common place, contrary to Fitz. N.B.21 t.

In the Kings Bench when the error is in any inferiour Court, whether the judgment bee given in the Common place (a) Chancery (b) City (c) or Corporate Town, as before the Mayor of *Excester*, or other Court of Record, for no Writ of Error is returnable in the Common place.

Statutes.

9 Ric.2.cap.3. If Tenant for life, or in tail, after possibility of the issue extinct bee impleaded, and judgement pass against him, hee that is in the reversion at the time of the judgement, shall have a Writ of Errour upon an errour in the Record of the same judgement, as well in the life of such a Tenant as after his death. And if at any time of reversing of the judgement, the Tenant for life, &c. be alive, hee shall not bee restored, &c. his possession, with the mesn issues, and he in the reversion to the arrearages of the same Rent, if any bee due. But if the Tenant for life, &c. be dead at the time of the reversing of the judgement, then hee in the reversion shall bee restored to possession, with the issues after the death of their Tenant for life, &c. and the arrearages of Rent due in his life.

31 Ed.3.cap.12. Errour in the Exchequer shall bee reversed before the Chancellor and Treasurer, taking to them the Justices

ſtices, and other ſuch ſage perſons, as they think fit. And after the Roll ſhall bee ſent back into the Exchequer, to make execution.

31 Eliz. cap. 1. If either Lord Chancellor or Lord Treaſurer, or both the chief Juſtices come at the day of adjournment in a writ of Error in the Exchequer, it ſhall bee no diſcontinuance.

32 H. 8. cap. 30. made perpetual. 2. E. 6. cap. 22. After a verdict tried by twelve men, or more, in any ſute in Court of Record, no judgement ſhall bee ſtayed or reverſed for any miſpleading, lack of colour, inſufficient pleading, miſcontinuance, diſcontinuance, miſcontaining of Proceſſe, miſ-joyning of the iſſue, lack of warrant of Atturney: for the party againſt whom the iſſue is tried; or any other default or negligence of the parties, their councellors, or Atturnies.

18 Eliz cap. 4. After a verdict of twelve men, or more, in any ſute in Court of Record, judgement ſhall not bee ſtayed or reverſed for default in form, or lack of form, as falſe Latin, variance from the Regiſter, &c. in any writ original or judicial, declaration, bill, or plaint, or for want of any writ original or judicial, or by reaſon of any imperfect or inſufficient return, or for want of any Atturney, or for any manner of

default in proceſſe upon, or after the prayer or voucher.

27 Eliz. cap. 5. After demurrer joyned or entred in any ſute in Court of Record, the Judges ſhall proceed and give judgement according as the very right of the cauſe and matter in Law ſhall appear unto them, without regarding any imperfection, defect, or want of form in any writ, return, plaint, or declaration, or other pleading whatſoever; except thoſe onely which the party ſpecially and particularly ſhall ſet down and expreſſe, together with his demurrer. And that no judgement to be given, ſhall be reverſed by any writ of errour, or by any ſuch imperfection, defect, or want of form, as is aforeſaid, except as onely bee before excepted.

Theſe two laſt Statutes extend not to ſutes of felony, or murder, nor to enditement or preſentment of them, or of treaſon, or other matter, nor to proceſſe upon any of them, nor to any ſute upon a popular or penal Statute.

1 H. 7.19. 23 El. Dy. 375. **In the Parliament, when the errour is in the Kings Bench: And is returnable before the King and the Lords only.** The order whereof is this, *viz.* The party that ſueth it, muſt have a Bill from the King indorſed; and thereupon the Chancellour muſt make him a Writ of Error, and then the chief Juſtice of the Kings Bench ſhall bring with him (in the Parliament) unto the Lords in the Inner Parliament Chamber, the

the writ of Error, and the bill endorſed, and all the Rolls wherein are contained the pleas and proceſſe, in which error is ſuppoſed, and there ſhall leave the tranſcript of all the Record and Proceſſe, &c. together with the ſaid writ of Error with the Clerk of the Parliament, who ſhall have the cuſtody thereof. And by the Lords onely, and not the Commonalty ſhall a Steward bee aſſigned, who together with the Lords, by advice of the Juſtices, ſhall proceed to amend the error.

Statutes.

27 **Eliz. cap.** 8. An Error in the Kings Bench in an action of debt, detinue, covenant, accompt, action upon the caſe, *Ejectione firme*, or treſpaſſe firſt commenced there (where the King is no party) may at the parties choice bee reverſed in the Exchequer Chamber before the Juſtices of the Common place, and ſuch Barons of the Exchequer as are of the choice, or ſix of them at the leaſt, other than for error concerning the juriſdiction of the Kings Bench, or want of form in a writ, return, plaint, bill, declaration, pleading, proceſſe, verdict, or proceeding whatſoever. And upon the judgement affirmed or reverſed, the Record ſhall be ſent back into the Kings Bench, to proceed and award execution thereupon.

The party grieved with ſuch reverſal or affirmation, may have a writ of Error in the

Parliament as upon judgement in the Kings Bench.

31 Eliz. cap. 1. Any three of the Juſtices and Barons (if the full number come not) may receive writs of error, award, proceſſe, prefixe daies for the continuance of the writs of Error.

F. N. B. 17. & 18. **False iudgement is upon errour in a base Court.**

Thus much of writs of Error and false Iudgement, there followeth an Attaint, and *Audita querela.*

Attaint is to enquire whether a Jury of 12. men gave a false verdict. That ſo the 18 E. 4. 9. judgement following upon it may bee reverſed, and the party reſtored to all that he hath loſt, that is to ſay, if it bee the defendant to his damages, and whatſoever elſe: if the plaintiff to his title, his action, &c. for 9 aſſ. Pl. 21. an attaint lyeth not till judgement bee given, and if the Writ bear date before, it Br. attaint. 42. ſhall abate. And this lyeth onely upon a verdict by twelve, for if hee loſe in a Writ of right, no attaint lyeth neither by the Common Law, nor Statute, becauſe it paſſeth by a Jury of more than twelve, that is to ſay, the grand aſſiſe. No more doth it in an enqueſt 39 H. 6. 1. of office, and upon a writ to enquire of da- 3 H. 6. 29. mages in treſpaſs, for that may bee by a leſs number than twelve.

And this muſt be brought in the life of him for whom it paſſed, and of ſome of them that gave it, whom wee call the petty Jury,

Jury, for if either the (a) party himſelf, or (b) all the petty Jury be dead, or (c) all of them but one, the attaint faileth, **and lyeth only upon a verdict in perſonal actions other than treſpaſſes**: For it ſeemeth that there was an attaint at the Common Law, becauſe Weſtm. 1. cap. 37. ſpeaketh of attaints without expreſſing any penalty. And 24. E. 3. **cap.** 7. giveth it in plea real as well as perſonal. So as it lay before in a plea perſonal, debt, detinue, covenant, and ſuch like: but not in treſpaſs, for that is given by ſtatute. And the reaſon why it lay not in an action of Treſpaſs, is becauſe then upon reverſing of the recovery the King ſhall loſe his fine. Neither did it lye at the Common Law in a plea real of Land, for Weſtm. 1. cap. 37. giveth it in that caſe. And the reaſon of that was, becauſe hee that loſeth may have a writ of right.

(a) 25 *H. 8. Dy.* 5. 26 *aſſ. Pl.* 12. (b) 13 *E.* 4. 5. (c) 34 *aſſ. Pl.* 6. 26 *aſſ. Pl.* 2. *Br. attaint.* 42.

The Jury here called the grand Jury, **are** 24, **who are to be warned the firſt day.** *Old N. B.* 111.

And the proceſs is againſt the party ſummons, reſummons, as in a mordanceſter, darrein preſentment, and *Juris utrum*, **againſt the petty Jury,** *venire facias*, **and diſtreſs.** *Old N. B.* 112.

The petty Jury muſt bee all preſent, when the grand Jury is taken, elſe it can never be taken, which was a great miſchief at the Common Law, for it might bee that ſome of them had nothing, and ſo would never appear. 22 *H.* 6. 8.

And may plead in bar of the attaint, as a releaſe, arbitrement, &c. for this excuſeth 35 *H.* 6. 30.

excuſeth them of their falſe oath, **but not in abatement of the writ**, as another attaint hanging, that the demandant had joyntly with another not named in the writ: or if a woman bring it to ſay ſhee is covert, &c.

19 *aſſ. Pl.* 15.

The Plaintiff in the attaint can give no more evidence than was given at the firſt. But the defendant in affirmance of the firſt verdict may.

34 *H.* 8. *Dy.* 53.

Statutes.

Weſtm. 1. **cap.** 37. An attaint is given in pleas of Land or of free-hold, or of things that touch free-hold.

1 E. 3. **cap.** 8. In writs of treſpaſſe as well upon the principal as the damages, though Execution bee not ſued of them.

28 E. 3. **cap.** 8. And that as well by bill as by writ, without regarding the quantity of the damages.

34 E. 3. **cap.** 7. An attaint is given in every plea, real as well as perſonal.

9 **Ric.** 2. **cap.** 3. Given to him in the reverſion, living his Tenant for term of life upon a recovery againſt him, with reſtitution of the Tenant that loſt his poſſeſſion, with the meſne iſſues. And of him in the reverſion to the arrearages of his rent. But if the Tenant that loſt be either dead, or were of covin with him that recovered, then reſtitution ſhall bee to him in the reverſion of the

the poſſeſſion it ſelf, with the meſne, iſſues and arrearages, after ſuch death and recovery by covin.

14 E. 2. Of Sheriffs and green wax, if the petty Jury appear not at the firſt grand diſtreſſe againſt them, or a *Nihil* be returned, the grand Jury ſhall bee taken by their default.

32 H. 8. cap. 3. made perpetual. 13 Eliz. cap. 9. In a ſute before Juſtices of Record not concerning life, an attaint is given againſt the petty Jury, and every of them, and the party himſelf.

The proceſſe againſt the petty Jury and grand Jury, ſhall bee ſummons and reſummons, and diſtreſs infinite.

Open proclamation ſhall bee made in the Court where the diſtreſs is awarded more than fifteen daies before the return of the diſtreſs.

The grand ſhall bee taken in default of the defendant, or petty-Jurors, or any of them.

The petty Jury that appear, being the ſame perſons, and the writ, proceſſe, return, aſſignment of the falſe oath good, ſhall have no anſwer, but that hee made a true oath, except the plaintiff or demandant hath been *non ſuit*, or diſcontinued, or had judgement againſt the petty Jury upon his ſute of attaint. But the party himſelf ſhall plead any thing onely in bar of the attaint,

taint. Notwithſtanding which plea, the grand Jury ſhall without delay enquire of the truth of the verdict. Such a day ſhall bee given in the proceſs as in a Writ of dower, and no eſſoyne or protection allowable.

By the death of the party, or one of the petty Jury, the attaint ſhall not abate, nor bee deferred againſt the reſt, as long as two of the petty Jury ſhall live.

Every attaint ſhall not bee in the Kings Bench, or Common place, and the *Niſi prius* granted upon the diſtreſs by the diſcretion of the Juſtices. And every of the petty Jury may bee by Attorney. The *non ſute* or releaſe of one when there bee divers Plaintiffs, or demandants in an attaint, ſhall not prejudice the reſt.

Every one of the grand Jury muſt have 20. marks a year Land of free-hold, out of antient demeſne. But if the value of the thing in ſute bee under the value of forty pounds, then five marks a year, or a hundred marks worth of goods ſufficeth for default of ſuch ſufficient Jurors, within the ſame County, a *Tales* ſhall be awarded unto the next.

11 H. 6 cap 4. The Plaintiff ſhall recover coſts and damages againſt the Juror or defendant, that pleads a fained plea in delay. *Audita querela* is for one being or to be in execution to relieve him upon good matter of diſcharge which he hath no means to

to plead. As if one having a releaſe, be taken in execution in one Court, as in the Common place, by writ out of another (as out of the Chancerie) returnable in the Common place, upon a Recogniſance, or condemnation in the Chancerie. (But if the Recogniſance or condemnation had been in the Common place, then they might have awarded proceſs upon that matter) If execution bee ſued of a Recogniſance by *Fieri facias* or *elegit*: (but not by *Scire facias*, for there hee hath day to anſwer, therefore it is his folly if hee come not in and plead it, that is to ſay, where the Sheriff returneth him warned: otherwiſe it is upon a *Nihil* returned) if a releaſe or acquittance bee made unto him after the *Scire facias* ſued, if after verdict and before judgment they have put themſelves into arbitrement. 22. H. 8. 56. 48. E. 3. 20.

The proceſs where the *Audita querela* is ſued, **before execution is a** *venire facias* **and diſtreſs**, and upon default after appearance and plea pleaded, a *diſtringas ad audiendum Judicium*, for thereby Judgement is to bee given againſt him. **And in this caſe** of an *Audita querela* ſued before execution, **hee may** have a *Superſedeas* upon good matter of diſcharge ſurmiſed in the writ of *Audita querela*, **to ſtay for once the execution upon ſureties**, ſo (*a*) can hee not being in execution. Neither (*b*) can hee have a *ſuperſedeas* before execution oftner then once, though (*c*) it bee upon new matter. But if the 12. H. 4. 6. 15. *Br. Audit. querelæ.* 15. 22. H. 6. 56. 12. H. 4. *ibid.* 47. E. 3. 3. 17. E. 3. 3. 28. E. 3. *p. Old N. B.* 66. (*a*) 11. R. 2. *Superſed.* 14. (*b*) 2. H. 7. 12. 22. H. 6. 34. (*c*) 43. E. 3. 28. *F. N. B.* 104 *q.*

(*d*) *Au-* *cont.*

(d) F.N.B. 204. q. (d) *Audita querela* bee abated for variance from the Record, or ſuch like, there in another *Audita querela*, hee may have a ſecond *Superſedeas*.

22 H. 6. 56. 15 E. 4. 5. After execution the Proceſs is a *Scire facias*, as if hee be brought in by a *Capias ad ſatisfaciendum*, for there hee is in priſon, otherwiſe it is if hee be not taken by a *Capias*, but come in *gratis*. And this *ſcire facias* is onely for the more haſty expedition of the party that is in priſon, for if the proceſs ſhould bee by diſtreſs infinite, peradventure the party would loſe iſſues to keep the others body in perpetual priſon.

Chap. 48.

Of certain ſpecial Writs wherein no Proceſs lyeth.

Thus farre of an Action, and the ſeveral parts of it. And of writs both Original and Judicial, that begin or proſecute the Action. Beſide which, there bee certain other originals out of the Chancery, which are as it were ſpecial anomalies and exceptions from the former. Being not diductory to bring any matter into plea or ſolemn action, but onely Commendatory or Prohibitory to do or leave ſomething undone. And therefore no Proceſs at all lyeth in theſe

theſe writs, but onely an (a) Attachment upon a contempt, for not executing or obeying them. (a) F.N.B.6.b. 158.d.134.a. Old N.B.15.35.

Of which nature are,

1. Commendatory ones, theſe that follow. *Dote aſſignanda*, is for the wife of the Kings Tenant, when the King is entituled by office of Land, whereof ſhe is dowable, alwaies directed to the Eſchetor. And may be either to deliver her ſuch part of her Land as is already aſſigned to her in the Chancery for her dower, or for the Eſcheror himſelf, to aſſign her part unto her. F.N.B. 263.c. F. N. B. 263.d.

If her husband held in chief, then ſhe muſt firſt take an oath in the Chancery, not to marry without the Kings licence, before ſhe can have this writ. But if hee held of the King by Knight ſervice, as of a manor, or if hee held from one that is in ward to the King by reaſon of his nonage, there ſhee ſhall not need to take any ſuch oath. F.N.B. 263.c. F.N.B. 264.a.

Homagio capiendo for tenant by homage auncestrel to compel the Lord to receive his homage, and is to ſave his warranty and acquittail, which hee loſeth if hee bee impleaded before the Lord have received his homage. 45 E. 3.23.

Scutagio habendo for the Lord to have eſcuage of his Tenants by Knights ſervice, when the ſame is due, by reaſon of any voyage Royal made by the King in proper perſon, or by his Lieutenants againſt the Scots, or them of Wales. F. N. B. 83.c.

Aid

F.N.B. 82.a.c. **And to make his ſonne a Knight, or to marrie his daughter, for the Lord to have this aid of his Tenants, where it is due.**

De corrodio habendo, & de Annua penſione, for the King. The (a) first to have a corodie for his ſervant, the(b) other to have a pencion granted to his Chaplein,(c) till he be promoted to a benefice. Both(d) theſe where the ſame are due. As (e) of common right a Corodie is due from every Abbey, Priory, or other houſe of Religion, whereof the King is founder in the right of his Crown. A (f) penſion from every Biſhopprick in England or Wales.

(a) F.N.B 230.a
(b) F.N.B.231.g
(c) F.N.B.230.a
(d) F.N.B.230.a & 231.g
(e) F.N.B.230.a
(f) Fit.ibid. F.N.B.229.b.

De libertatibus allocandis, for one whether a ſingular perſon, Burgis, Citizen, or other, or a body corporate, **empleaded before the Kings Juſtices** of the one Bench or other, Juſtices errants, Juſtices of the foreſt, &c. **to have the liberties granted them** by the King, or his progenitors, **to bee allowed** where the Juſtices will not make allowance of them. And therefore is to bee directed to the Juſtices themſelves, not to the ſheriff, for hee is but their officer, and ſubject to be amerced by them, if he do not his office as he ſhould.

Old N.B. 15. *De executione Judicij*, **to have a Judgement executed**, whether the ſame were given in a Court Baron, *viz.* the Court of the Lord, Hundred, or County Court, by writ of right *Juſticies*, or plaint without writ, or in Court of Record. The ſame to be directed

cted to the ſheriff, if judgement were given before the Bayliff in the Hundred or Lords Court, to the Coroners if it bee before the Sheriff in the Countie Court, to the Juſtices themſelves, if it be in a Court of record. And this writ is a *Juſticies*.

De reſtitutione temporalium, **where the temporalties** before ſeiſed into the Kings hands, **are to bee reſtored to** a Pryor or Biſhop elect and conſecrate. And this muſt be directed to the Eſchetor. F.N.B. 169.

De ſecuritate pacis, **for him that is in fear of corporal hurt**, to be killed, beaten, aſſaulted, &c **or of the burning of his houſes**, **to be ſecured of peace in that behalf, againſt the partie whom he feared.** And may be for either of theſe cauſes alone, or for both joyntly in one writ, **where a corporal oath muſt bee taken by him that ſtandeth ſo in fear.** And that was wont to bee in the Chancerie before ſome Maſter of the Chancerie, by the auntient courſe of Law. But now they uſe to purchaſe ſuch writs by their friends there without taking of an oath, which maketh them to bee ſued forth many times more for the vexation of the parties than upon any juſt cauſe. The common form of this writ ſince the Statute 1. E. 3. **cap.** 16. which appointeth Iuſtices of peace, is for the eaſe of the people ſomewhat altered, and it is called a *ſupplicavit*, directed ſometimes to the Juſtices of peace, and to the Sheriff, ſometimes to the Juſtices or one Iuſtice ſole, and ſometimes to the F.N.B. 79.

Sheriff

Sheriff onely to compel the party to finde ſufficient mainperors in a reaſonable ſumme of money, that hee ſhall neither do nor procure any bodily hurt, or burning of the parties houſes; or upon refuſal, to commit him to the Gaol till hee do.

Old N.B. 33. *De vi Laica removenda*, **to remove all lay force in any Church**, eſpecially where debate is between two perſons of a Church of prebends about the title, and one with force and arms holdeth the other out: and (*a*) this writ may bee as well upon the bare ſurmiſe of the Incumbent or party grieved; without any Certificate made by the Biſhop into the Chancery, of ſuch force as upon, and by reaſon of ſuch Certificate. And there bee two ſeveral formes of writ in theſe two caſes, But hereby the Sheriff may not remove the incumbent out of poſſeſſion of the Church, whether hee be in by right or wrong, for then hee may have a writ to reſtore him again, but onely remove the force: and this writ is returnable, or not returnable at the parties pleaſure that doth ſue the ſame, and may bee returnable in the Common place, as well as in the Kings Bench.

(*a*) *F.N.B.* 54.

F.N.B. 185. *d.* **Of cleanſing ſtréts to have the waies, ſtréts or lanes of a Town Corporate**, of the Suburbs of it, **to bee made clean, and ſo kept, when they be ſtenckt**, by dung and filth, hogſties, and ſuch like, whereby the ayer is corrupted and infected, to the indangering of the health, or other great diſcommodity

nuisiry to the Inhabitants or Travellers that way. But it seemeth that no such writ lyeth for the Village in that Countrey, though they bee not kept clean, but for corporate Towns onely.

De Leproso amovendo, to remove a Leper or Lazer, that will come abroad to Church among his neighbours from the company of men to some solitary place of dwelling, And that is for fear of infecting of them: but if hee will keep in his house, and not come among his neighbours, then it seemeth hee shall not bee removed thence, nor that any Lepers or Lazers shall bee removed by this writ, but onely such as appear to bee so by their speech, ulcers, rottennesse of flesh, stink, and such like, and not those, that though they bee infected inwardly, yet appear not so without. F.N.B. 234.

De excommunicato capiendo, upon a *significavit*, so we call the ordinaries Certificate into the Chancery, that one excommunicate standeth out forty daies, and will not bee justified by the sensures of the Church to imprison, and so to justifie him by his body, till he satisfie holy Church for his contumacy and contempt, and this writ also is a *Justicies*. *Old N.B.* 34. & 35.

De excommunicato deliberando to deliver him out of prison when the Church is satisfied, and hath absolved him. *Old N.B.* 35. *a.* F.N.B. 63. *a. f.*

De cautione admittenda, when one taken by an *Excommunicata capiendo* offereth sufficient pledge, or caution to obey holy Church, F.N.B. 63.

Church, which is refused to have that caution admitted and to bee delibered: and may be either to the (a) ordinarie himself to command him to bee delivered, which the ordinarie may doe by word, or to (b) the Sheriff to make such deliverance, and then it is withall, a *de excommunicato deliberando.*

(a) F. N. B. ibid.

(b) F. N. B. 63. d

De heretico comburendo, **to cause one convicted for an Heretick to bee burnt.** And this as the other writs to bee directed to the Sheriff, the partie being committed by the Clergie into the secular power. But by the Statute 2. H. 4. cap. 15. Every Bishop in his Diocesse may convict a man of heresie, and cause him to abjure, and after convict him anew, and condemn him to the fire, and thereupon make a precept to the Sheriff to take and cause him to bee burnt, and the same a sufficient warrant to the Sheriffe without any writ of the King: but that Statute is repealed by 25. H. 8. ca. 14. so as now the ordinary cannot commit him to the lay people to bee burnt without the Kings writ first purchased.

F.N.B. 269.

De coronatore exonerando, **to discharge a Coroner of his office upon iust cause.** As if hee cannot attend his office for other businesses of the Kings that hee is imployed about in the same Countie, or bee old and feeble, or unfit for the office, and have not lands and tenements sufficient in the countie, whereupon hee may dwell according to his state, or have the Palsey, or dwell in the remote

F. N. B. 163. n.

remote parts of the Shire, so as hee cannot conveniently exercise the office; or such like.

And this writ is directed to the Coroner himself. F.N.B. ibid.

De exonerando viridario forestæ, to discharge a verder of the Forest in like sort.

De coronatore eligendo, to chuse a Coroner, two or three if there bee need of so many, in full County by the Freeholders of the County. And this is commonly upon the death or discharge of some of the Coroners, when it is upon the discharge, then this Writ rendreth the cause of their discharge. F.N.B. 163. k.

De electione viridariorum forestæ, to chuse a verdor of the Forest in like sort. *Congé d'estier*, to Dean and Chapter, or such like to chuse their Bishop. F.N.B. 164. c.

Statutes.

25 H. 8. cap. 20. For the election, nomination, presentation, investing, and consecrating of Archbishops and Bishops.

A writ for the royal assent to signifie to the ordinary his assent to the election of an Abbot, &c. and to will him to execute that which belongeth to him, therefore this is alwayes to the ordinary himself.

De securitate inveniendâ qd. se non divertat ad partes exteras sine licentia Regis, to compell one to finde sufficient mainpernours in a reasonable sum of money, not to go into

forreign parts out of the Realm, without the Kings licence, nor any thing there attempt in contempt or prejudice of the King or hurt of the people, nor send any thither for any such cause. And as a *Supplicavit* may be directed to the Justices of peace, or Sheriff, or both. And every one upon surmise to the Chancellor may sue this Writ for the King; for by the Common Law every one that will, may go out of the Realm for Merchandize, travel, or other cause at his pleasure without the Kings licence. But the King may restrain any subject by this Writ, or by his privy Seal or Signet, or by Proclamation without Writ, or other commandement, because every man is bound of common right to defend the King and his Realm.

5 Ric. 2. cap. 2. None shall go out of the Realm without the Kings leave upon pain of forfeiture of his goods, except the Lords and other great men of the Realm, known Merchants, and the Kings souldiers

Statutes repealed, 4 Jac. cap. 1.

All *dedimus potestatems*. The principal of them are these.

F.N.B. 170. b. *Dedimus potestatem*, to give the Kings Royal assent to the election of an Abbot, or such like, made or to be made, and it signifie so much by his Letters to the Ordinary, that he may do that which belongeth to him, and to receive fealty, commanding the party to do the premisses. And therefore is directed to the party him-

himself that must doe these things.

Dedimus potestatem de fine levando, **to certain persons to take the acknowledgement of a fine out of Court, when one that hath agréd in the Kings Court to levy a fine, is so feeble that he cannot travel**, for every such *dedimus potestatem*, supposeth a Writ of covenant, or such like hanging. And they to whom this Writ is directed, must go in proper person to the parties to take the conisance, which being certified to the Kings Justices of the Common place, the fine shall be engrossed. **The chief Justice of the Common place may take the acknowledgement of a fine without any** *dedimus potestatem*, so can no other Judge, *de rigore Juris*. But a Justice of assise by a general patent with a clause of *non obstante* may. F.N.B. 146. g. Old N.B. 103. F.N.B. ibid. 1 H. 7. 9. Old N.Br. ibid. 1 H. 7. 9.

Statutes.

Stat. Carlil 15. E. 2. The *dedimus potestatem* shall be directed to two of the Justices, or one Justice and a Knight.

Prerogative.

Dedimus potestatem de Attornato faciendo, **for the Judges to admit an Attorney for one in a suite**, whether it bee for the Plaintiff or Defendant, Demandant or Tenant, and in what action or suite soever the same be. This Writ must be directed to the Judges themselves, and groweth by the Kings Prerogative, F.N.B. 25. c.

rogative, for at the Common Law the parties muſt appear in proper perſon, not by Attorney, although the Statutes gave power afterwards to make Attornies in divers caſes, as appeareth before. But before thoſe Statutes it ſeemeth that the King might grant to any man to make an Attorney in any ſute. And one reaſon thereof was, becauſe it is no error though the Judge admit any Plaintiff or Defendant to make an Attorney, where by the Law he ought not.

Prohibitory ones are theſe that follow.

Old N.B. 29. a. & b. **A protection** *cum clauſula nolumus* **to free ones poſſeſſions**, land, rent, corn, cattel, carriage, &c. **that nothing be taken againſt his will for the Kings buſineſs**, by his officers or miniſters. This may be as well for a ſecular as a ſpiritual perſon, and groweth by the Kings ſpecial favour.

F.N.B. 176. a. **Perſons or other ſpiritual perſons not to be charged to the payment of fifteens, for goods in their poſſeſſion annexed to their Churches.**

Old N.B. 175. b. *Quod clerici non eligantur in officium baſtivi*, **for a Clerk** ſo is every one termed that is within holy orders, **not to be choſen an officer**, as bayliff, Beadle, Reeve, &c. **for his lands**, and this Writ reciteth that by the common Law they ought not, and commandeth that if any diſtreſs or amerciament bee levied, in this reſpect, it be reſtored.

F.N.B. 55. e. 14 H. 8. 6 Shelly **A prohibition to forbid tenant in dower, or by curteſie of England, or gardein by Knight ſervice, or in ſoccage, to commit waſte**

waste to the destruction of the inheritance. But this Writ lyeth not against lessee for life or years, for they come in by their own lease; but in the other cases before the Law maketh their estate. *The form of the writ.* *F.N.B.* 8 *c.* 14 *H.*8. *ibid.*

Statutes.

Glocest. cap. 5. A man may have a Writ of waste out of the Chancery against Tenant by curtesie or dower, or otherwise for terme of life or years, and being attaint of waste, hee shall forfeit the waste and treble damages.

Westmin. 2. cap. 14. The process in a Writ of waste shall be summons, attachment, distress, and if he come not, then a Writ unto the Sheriff, taking with him twelve men to go to the place wasted, and there inquire of the waste, and upon that waste returned, judgement shall be.

11 *H.*6. **cap** 5. Where the Tenant grants over his estate, but notwithstanding takes the profits, and commits waste, an action lyes against him.

Magn. chart. cap. 4. The gardein may not commit waste upon pain to lose the wardship.

Cap. 5. And must repair and sustain the houses, of the profit of the land.

Glocest. cap. 5. If the Gardein commit waste, and the Wardship lost answer not the value of the damages before the heirs age, then he shall render the damages to the heir.

Artic. super chart cap. 18. Escheator committing waste upon Wards lands, shall

anſwer damages as is ordained before by Statute againſt them that do waſte in wards lands. So of a Subeſchetor, and if he be not able his Maſter ſhall anſwer for him.

36 E. 3. cap. 13. Stat. 1. If the Eſchetor have a ward to anſwer to the King of the iſſues, and commit waſte, the heir ſhall have an action of waſte as well within age as of full age, and whileſt he is within age, if hee cannot, his next friends ſhall have the ſute for him.

14 E. 3. cap. 12. The heir when hee commeth to full age ſhall have an action of waſte againſt the Gardeins and Farmours to whom the King ſhall let the land in ward according to that Statute.

Weſtmin. 2. cap. 22. A Writ of waſte given for one Joyntenant or Tenant in Common, againſt another, wherein the Defendant to be at his choice to take his part in certain (and then to have for his part the place waſted) or to agree from thenceforth to take nothing more than his Companions do.

Glocest. cap. 13. Hanging a plea by writ the Tenant may not commit waſte, nor eſtrepment of the land in demand, and if he do, the demandant may have a writ to cauſe the land to bee kept that no waſte nor eſtrepment be done.

Old N.B. 159. A *quo minus* for grantee of eſtovers, as houſeboot or heyboot, &c. to reſtrain the grantors from committing waſte, ſo as he cannot have his eſtovers.

De exoneratione ſectæ, for Tenants by ſute

sute of Court, or other rent or services that they bee not distreined to do the same for such time as they ought to hold the land discharged. As one which is in ward to the King, a woman indowed in the Chancery of lands so in ward, and the Tenants paravail of such a ward, that is to say, where the other Lords of whom the heir holdeth do distrein, for during such time as the heir is in Ward, either to the King or to his Committee, hee is to do no sute of Court or other services, and if any distress bee taken, it is by this writ to bee restored. F.N.B. 158.

De deonerando pro rata, **to discharge the Tenant of parcel of the land according to the rate of his land when hee is lawfully distreined for all the rent or services.** As where a man which holdeth a C. Acres of land by the service of repairing a bridge, alien in Fee 20 Acres to one man, and 20 to another, and after, upon this presented, one of the alienees is onely distreined to make reparation, or where the Kings Tenant by Fealty and Rent alieneth parcel of the land, and the Kings officer distreineth the alienee for all the Rent, for the King is not bound by the Statute of *Quia emptores terrarum*, which will that the Feoffee shall hold *pro particula*, but that hee may distrein for all the Rent in the part of the alienee, but such a writ lyeth not where one that holdeth of a common person by Fealty and Rent, alieneth part of his land, for there the Statute F.N.B. 135. b.

is ſelf reſtraineth the Lord that hee cannot diſtrein the alienee, but after the rate and value of the land which he hath purchaſed.

F.N.B.226. i. *De eſſend. quiet. de Theolonio* **to officers** of Towns or other places **not to grieve ſpiritual perſons, or other that ought to be quit of paying of toll, murage, pannage, pontage, &c.** whether by the Kings grant, or by preſcription.

F.N.B.165.a.d *De non ponendo in Juratis*, **to diſcharge Peers of the Realm, or other perſons priviledged,** as Clerks that are in the Kings ſervice, &c. **from being of Jury, unleſs their preſence be for any ſpecial cauſe neceſſary.**

F.N.B.165.c. And this may be directed either to the Sheriff not to put them into Juries, or to the Judges to diſcharge them. But if a Peer of the Realm be returned, hee muſt be ſworn or loſe iſſues, if he appear not, unleſs he bring the Writ.

F.N.B.85.b. *Ne exeas regnum*, **to the party himſelf to inhibite him to go into forreign parts without the Kings licence.**

The

The Table.

A

Abatement of the writ, 49. for what causes, *ibid.*
Acceptance of a grant determineth prescription, 22
Accessary things are of the nature of the principal, 23
Account, 302
Accord, what it is 181 differeth from an arbitrement, 181, 183
Action what? 225 where local, and where not, 251. Action of the case wherefore brought 185, 186. for a corporal hurt dyeth with the party, 17
Acquital, of the donees in fankmarriage by the donor, 141. of the donee in frankalmoigne by the donor, 139
Ad terminum qui præterit, 263
Age of discretion, 28 that shall binde a man or woman in matter of marriage *ibid.* that maketh a woman capable of dower, *ibid.* 126. of a woman to continue ward, 146
Alien, trial between him and a denizen shall be *per medietatem linguæ*, 411 being enemy shall not have a personal action, 28. an obligation made to him shal go to the king *ibid.* his goods shall be to their use that seise them, 178

Aide what, 145, 146
Annuity what, 161
the uſe of the writ of annuity, 301
Amercement, the Qu. ſhall not bee amerced, 185. In what cales the Plantiff ſhall bee amerced, 289. In what caſes the defendant, *ibid* officeramerced 229
Amendment done by the Juſtices of the Clerks error, 228
Apportionment, a duty growing upon a contract cannot be apportioned, 180
Appeal, 310
Approver, 387
Aſſault, what, 202
Aſſiſe, 284
Attornment of Tenant by homage anceſtreldeſtroyeth the warranty, 144 In what caſes it is neceſſary, 156. Of Tenant of the freehold is ſufficient, 157
Averment cannot bee againſt an Indenture, 109. not a Record of Court, 131
Authority, derived cannot bee greater than that from which it is derived, 11

B

Ailment, of two ſorts, 179
Barons, what, 86 ſhall not bee impleaded by that name, 87
Baſtard, who, 117. cannot inherit, *ib.* In what caſe hee may gain a right of inheritance, 118
Battery, what, 203 when not puniſhable, *ibid.*
Boroughs what, 92 the difference between them and Towns, *ibid.*
Burglary what, 217

C

Auſe, if that ceaſe the effect ceaſeth alſo, 8, 9 things con-

conſtrued according to that which was the cauſe thereof, 10
Cauſa matrimonii prælocuti, 364
Challenge, 412,413
Claim, 121. Of villeins goods by the Lord, 159
Colour, in giving it what muſt bee obſerved, 380,381
Commiſſions, 318
Common what, 157
Common-wealth, things which concern it favoured, 39
Confeſſion, 387
Confirmation what, 108
Conſideration, it maketh the promiſe binding, 34. What ſhall bee a good conſideration to raiſe an uſe, 25
Conſolidation what, 90
Conſpiracy, 305. how made, and how puniſhed, *ibid.*
Conſuetudinibus, & ſervitiis, 272
Contempts what 205,
Coparceners, who, 118. the eldeſt ſhal have the chief houſe, 132. ſhe only ſhall do homage 142. unles the land be held of the king 144. they maycompel partition, 36
Corody what, 157
Coroner, his Court, 243. muſt take no Fee, 244. In what caſe proceſs is directed to him, *ibid.*
Corporation, 87. of two ſorts, 91. a Parſon is a Corporation, 88. regular Corporations what, 92 ſecular what, 93 thoſe ſpiritual are either preſentative or dative, 93 Churchwardens a Corporation. 178
Count what, 357
County what, 79
Countermand, where good, and where not, 31
Cui in vita, 265
Curia claudenda, 276

Cur-

Curteſie of *England*, in what caſe the husband ſhall take benefit therby, 129 ſhall not bee of a poſſeſſion in Law, *ibid.* why ſo called *ibid.*

D

DAy, the Sabbath is no day for Law caſes, 7 Sale upon that day altreth no property, *ib.* if the end of the term, or day of return bee on that day, the day following is taken inſtead of it, 236 things done in the day, favoured more than thoſe done in the night, 38
Debt & detinue, 294
Deceit, 305. what, 188. in what caſes a man may have remedy, *ibid.* 189
Deeds what, 108. of two ſorts, 109. to whom they belong *ibid.* void in the beginning cannot have a good perfection 112. not available if read falſely to an unlearned man. 109
Deodand what, 214
Departure what, 50, 51
Diſcontinuance what 190. how made, *ib.*
Diſſeiſin what, 195
Diſtreſs, 135. what may be diſtreined, and what not, *ibid* the King may diſtrein where a common perſon may not, 136. where diſtreſs may not be taken, *ib.* it may not be driven forth of that Hundred where it was taken, 137. A Milſtone cannot bee diſtreined, 39
Dower, in what caſe the wife ſhall bee endowed, 125, 126 is forfeited by granting a greater eſtate, 114. barred by

by living in adultry, 127. by detaining deeds concerning the inheritance, 126. by consenting to the raviſher, 204
Dum fuit infra ætatem, 264
Dum non fuit compos mentis, 264

E

Ejectione firmæ, 310
Enterpleader what, 374
Entry, whereof one copercener ſhall be the entry of the reſt, 118. gaineth right of inheritance to a baſtard eigne, 118. the writ, 261, 262
Eſchete when, 130. of all Cities belongs to the King, 132
Eſcheator, ſhall tarry in his place but one year, 241
Error, being common goeth for Law, 41 of the Clerk of the Court amended, 227. if the Sheriff ſuffer a common recovery it is error 19
Eſtoppel, made by pleas in bar, and replications, 32 but matter in the writ or count doth not, 33
Exchange, warranty knit thereto by Law, 116. when good and when otherwiſe, 103, 104
Executors, they muſt prove the Wil, 171 may not refuſe after adminiſtring, *ibid.* what duties they muſt firſt diſcharge 172. if an Executor is Executor to the firſt Teſtator, 173. muſt pay duties upon record firſt, 233
Extinguiſhment, if a woman marry the obligor the debt is extinct, 40

F

Fealty what, 138
Felony what, 210
Feesimple of two sorts 121. is by giving lands to Mayor and Comminalty without naming successors, 125
Fine for lands alienedwithout licence 143. by the defendant in an action of Trespass, 189
Franchise what? 164 of divers kinds, 166
Frankalmoign what? 138, 139. the Lord must warrant such a Tenant, 139
Frankmariage what? 123. Land cannot be given in Frankmariage with a man, 123. land so given is held by fealty only, 140, 141
Forfeiture, what shall not be forfeited by attainder of treason 15. of a termour by plucking the inheritance out of him that hath it, 113. by alienation without licence, 141, 143. of a franchise by misusing it, 164

G

Gauelkind, 78 the custome thereof not changed by having a fine and recovery at Common law, 15
Grant, of an infant, 102, 103. by compulsion, 102. cannot be of things in action, 107. what things may not be granted over, 17

H

Heir what? 116 in what case he shal be bound by his ancestor. 119
Hereditaments what 111, 134
Heresie what? 219 the punishment thereof, *ibid.*

Ho-

Homage what, and how performed, 142. to the King ſhall bee taken by his Chamberlain, *ibid.* anceſtrel. 144 incident to Knights ſervice, 149
Hotchpot, what? 124. In what caſes it ſhall be, *ibid.*

I

IDeot, the King ſhall have to his own uſe all his poſſeſſion during his ideocy, 95. his grant is void, 102, 103
Incidents cannot bee ſevered, 15. homage incident to Knights ſervice, 149
Infant, his will nothing worth though he dyeth at full age, 12. his grant void, 102. unleſs for things neceſſary, 103
Joynt-tenant who? 97 the ſurvivor ſhall have the whole, *ibid* cannot ſue one another, 37
Iſſue what? 396
Jurà Utrum, 202
Jurors returned to appear at the Sheriffs turn, 243. trials by Jurors, 399, 400, 401
Juſticies, 314

K

KIng, hee is the Head of the Commonwealth, 81. hee cannot be nonſuite, 82. alwayes preſent in Court, 81 when bound by act of Parliament, 84, 234. all land is holden of him, 132. being Tenant in Common of an entire Chattel real, ſhall have the whole, 178 how his grant ſhall bee taken. 101. cannot diſpence with an Act of Parliament before it bee made. 235

Knights ſervice, homage is incident thereunto, 149

L

LAnd what, 130 what is comprehended under that name, 131
Lapſe what, 90
Law defined, 1 Native or poſitive; 2 It favoureth right, 45
Leaſes, what Leaſes made by a Corporationare void, 192
Lunaticks, the King ſhall have their poſſeſſions, 96

M

MAintenance, a ſon may maintain his father, 25
Maym what, and whom, 204
Manſlaughter what, 212, 215. is pardoned by a pardon of murder, 21
Menace what, 201
when a treſpaſs, 203
Meſne what, 140 muſt acquit the tenant of all ſervices againſt the Lord paramount, *ibid.*
Miſpriſion what, 209
Murder what, 215 when one may juſtifie to kill another, 35

N

NEceſſity, it ſaveth the party from puniſhment, 35
Notice muſt be taken by the Court of all apparent faults proceeding from the action, 226
Nuſance what, 187. is to bee removed, 188. the Kings Licence doth not make it lawful, 234
Nuper obiit, 293

O

OAth taken by officers, 230
Office what, 162

161. a grant thereof to an unskilful man is void. *ib.* offices for the King. 323
Officers what. 229
Ordinary, every Parſon muſt be preſented to him. 89 may collate after ſix moneths avoidance 90. by conſent of patrons may unite two Churches, *ib.* may adminiſter the goods, where no Will is 173. ſhall bee anſwerable for the inteſtates debts 174. immediate officer to Courts for ſpiritual matters 237
Oyer of a deed. 366

P

Parſon, is a corporation, 87. is freed from parſonal charges, 88. to whom preſented, 89 how inducted, *ibid.* the Church and Churchyard belong to him. 131. One cannot preſent himſelf to a benefice. 89. chargeable for an annuity granted by his predeceſſour 23
Peeres where one is a party to the action, a Knight muſt be of the Jury, 412 ſhal be tried by his Peeres, *ib.* exempted from doing ſuite at Courts. 241
Petit treaſon what. 218. how puniſhed, *ibid.* of divers ſorts. 230
Plaints what, & where holden. 320
Pleading, what. 359. the manner thereof 360. of ſeveral ſorts 361, 363. Pleas in barre. 378
Pypowders, that court incident to Faires and Markets. 246. trials there ſhall be by the Merchants. 412
Poſſeſſion what. 104

it prevaileth where the right is equal. 30
Poſſibility, may preſerve an Act from being void. 33
Preſcription, where it maketh right, and where not, 132. is as availeable as any grant. 104
Preſentments. 335
Property, not changed by ſale upon the Sabath day. 7. cannot bee had in wilde beaſts and foules of the aire. 176. when the Lord hath property in an eſtray. 177. of goods may be in an alien. 178. when altered by ſale of another mans goods. 180. altered by an accord made of a perſonal thing. 182. deveſted by wrongful taking of goods. 199 not altered by ſtealth. 210

Q

Quare impedit. 274
Queen, ſhee may have an action in her own name. 86. making leaſes, &c. they ſhall bee good for her life. 86 ſhe ſhall not be amerced. 185
Quo warranto. 322
Quod permittat. 274

R

Rape, what. 204
Relation, of words to the next antecedent. 8
Releaſe, what. 107. void without privity. 115
Remainder, what. 113
Remitter, what. 194. when iſſue in taile ſhall bee remitted. 18
Rent, charge what. 155 ſeek what, *ibid.* reſerved upon a gift of lands in frank-mar-

marriage, when good. 18
Reſcous. 310
Reverſion, what. 113
Right, what. 106. a writ of right, 270. of Right patent. 312
Robberie, what. 217

S

SEiſin, the uſe ther-of. 132. from what time it ſhall bee alledged. 258
Services, are common to all certain Eſtates and proper inheritances. 138 Divine Service, what. 139. Knights ſervice, what. 149
Sheriff, ſuffering a recovery it is errour. 19. felony in him to behead one that ſhould bee hanged. 31
Sine aſſenſu capituli. 265
Soccage tenure, what. 147
Sodomitry, what. 219
Suit of Court, what. 144 cannot be done by deputy 16. who ſhall be conſtrained to do it. 145. muſt be done at the Sheriffs turn by every one of 12. years of age, 241. women & Peers of the Realm are excepted. 241. 242

T

Tales. 414 415
Terms, when they begin, and end and their ſeveral returnes, 236.
Tenement, what 130 of two ſorts. *ibid.*
Teſtament, what. 167 all chattels may be deviſed, *ibid.* what lands may be deviſed. 169. 170
Title what. 106. pretenſed titles when they may bee ſold 250
Town, chargeable with the goods of offenders. 207
Treaſõ what, 220, 221

V

VAriance, between the writ and obligation. 49
View. 366
Villein, what. 159. his original, 160. 332 the lord muſt claim his goods, 159. where the lord may not ſeiſe him, 160. his children are villeins, 160. what ſhal bee an infranchiſement, *ibid.* ſhall make free land to be villein land. 23. being an executour may have an action againſt his lord. 27
Uncertaintie maketh the grant void. 49
Void things good to ſome purpoſe. 62
Vſe, feoffement to the uſe of a villein the Lord may enter. 159
Uſurpation, what 196 how done. *ibid.*

W

WAger of battel ſhal not be by Coſins in a writ of right. 25
Ward ſhal be his that can firſt hap him 30.
Warranty, what word maketh it. 115. knit by Law to everie exchange 116. occaſioned by homage aunceſtrel. 144. which is deſtroyed by attornment. *ibid.* where it maketh a diſcontinuance. 193 the writ of *Warrantia chartæ.* 278
Waſt, the wife ſhall not bee charged for waſt done by the husband. 26. judgement ſhall not bee given in waſte, where the waſte is but 12. pence. 29
Way granted over anothers ground ſhall bee to the grantee ones

onely. 17. & he cannot assigne it over, 31. given by law to a thing excepted, 63.
Women may relieve their husbands though it bee felonie in another, 25. are free from suite of Court, 241. when said to bee waived, 242. shal be indowed of the best possession of her husband, 26.
Wrecke, shall not bee, if any living Creature escape out of the ship, 177.
Writ what, 237. of two sorts, 252. abated for false Latin, 76.

Ex. L. C. C.

FINIS.

A Catalogue of Books lately Printed.

Law Books.

A New Book of Judicial Writs, fitted for the uſe of all ingenious Practitioners in the Law. Collected and publiſhed in Latin by R. B. Eſq;. in Folio.

The Common Law Epitomized: with directions how to proſecute and defend perſonal actions. in Octavo.

The Exact Law giver, containing the principal Grounds of the Law. in Octavo.

Modern Reports, begun in the Kings Bench Court, from the 21 of King *Charls*; to 1655. by *William Styles* in Folio.

Styles, Practical regiſter, in Octavo.

Leighs, Law Terms. in Octavo

Holdsboroughs, Reports. in Quarto.

Huma-

The World ſurveyed, or the famous Voyages, and travels, of *Vincent le Blanck*? through moſt parts of the world. in Folio.

Aminta, the famous Italian Paſtoral, tranſlated into Engliſh verſe, by I. D. in Octavo.

The Shepheards Paradiſe, a Comœdy acted by the Queen and her Ladies of honour, written by *Walter Mounttague*. in Octavo.

An Hiſtorical, and Geographical deſcription, of the great River, and Country of the Amazones in America. in Octavo.

Virtus Rediviva, a Panegyrick to the King, with ſeveral other Ingenious peeces by T. F. in Octavo.

The Extravagant Shepheard, an excellent Anti-Romance, in Folio.

Divinity

A Treatise, of Religion, and Learning, and of Religious, and Learned men, by *Edward Leigh* Esq; in Folio.

A Practical and Polemical Commentary, on the second Epistle to Timothy, by *Thomas Hall.* in Folio.

Daily Devotions, in Twelves, by H. H.

An Exposition, upon the major Prophets, Fol. by *John Trapp.*

All these books are to be sold by *Cha. Adams*, *Jo. Starkey*, and *Tho. Basset.* in Fleetstreet.

